

SOUTH AFRICA / JUDGMENT

Body Corporate of Umoya v Singh (25232/2018) [2018] ZAGPPHC 949 (14 December 2018)

[2018] ZAGPPHC 949**COURT**

North Gauteng High Court, Pretoria

BEFORE

Mosopa

CASE / FILE NUMBER

25232/2018

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Source record**REPUBLIC****OF SOUTH AFRICA****IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG****DIVISION,****PRETORIA****(1)****REPORTABLE:**

YES/NO

(2)

OF

INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED

CASE

NO:25232/2018

14/12/2018

In

the matter between:

THE

BODY CORPORATE OF UMOYA

PLAINTIFF

and

LUNESH

SIGNH

DEFENDANT

JUDGMENT

MOSOPA AJ:

[1] This is an application for summary judgment in terms of Rule 32(2) of the Uniform Rules of Court in which the plaintiff for the payment in the sum of R52. 128.55 plus interest at the rate of 16% per annum. from the date of summons to date of final payment.

However it was placed on record by Mr Marais that Mr Singh has been representing himself in a number of litigations against him. a fact which was not disputed by Mr Singh.

[3] The defendant in his affidavit resisting summary judgment tabulated his defence in the following:

3.1 That the defendant did not receive the summary judgment application and was only made aware of this action when the Notice of set-down was served on him;

3.2 The plaintiff failed to provide a Sheriff return of service for the Summary Judgment application. yet plaintiff provided a Sheriff return of service for the initial summons dated 11 April 2018:

3.3 That the defendant served a Notice of Intention to oppose the Summary Judgment on the plaintiff's attorneys chosen domiciliary:

3.4 The plaintiff made an application for summary judgment and failed to state any reasons for its application:

3.5 The plaintiff merely attached an agreement with Trafalgar Property Management for levy Solutions the legal is un-taxed by a Taxing

Master and included in the amount of R52,128.55:

3.6 The legal fee is un-taxed by a Taxing Master and included in the amount of R.52.128.55:.

3.7 The legal fees occur 30 days on the statement and totals to R4,275.00 which is over 8% of the total R52.128,55;

3.8 The legal fee of R.150.00 on the 15 June 2017 is un-taxed by a taxing Master and included in the amount of R52.128.55:

3.9 The plaintiff's claim and calculations include double interest:

3.10 The plaintiff has failed to cite Standard Bank of South Africa as a party due to the fact that the bank is the bank holder of the property.

[4] It is not in dispute that Mr Singh is the owner of the property described as Unit 23 Umoya, 5 Kiku Road, Sunninghill, Ext 23 situated in the Gauteng Province. The property forms part of the building or buildings comprised in a scheme in terms of the Sectional Titles Act 95 of 1985 ("The Act"). It is because of that fact, that the provisions of the Sectional Titles Act are applicable in this matter.

[5] The management Rules to the Sectional Title Scheme Act provides as follows:

"30. It shall be the duty of the trustees to levy and collect contributions from the owners in accordance with the provisions and in the proportions set forth in rule 31.

31.(1) The liability of owners to make contributions and the proportions in which the owners shall make a contribution for the purpose of section 37(1) of the Act, or may in terms of section 47 of the Act be held liable for payment of a judgment debt of the body corporate, shall with effect from the date upon which the body corporate comes into being, be borne by the owners in accordance with a determination made in terms of section 32(4) or the Act, or in the absence of such determination in accordance with the participation of their respective sections.

[6] Section 37(1) of the Act provides:

"37

- (1) A body corporate referred to in section 36 shall perform the function entrusted to it by or under this Act or the rules, and such function shall include-
 - (a) to establish for administrative expenses a fund sufficient in the opinion of the body corporate for the repair, upkeep, contract

management and administration of the common property (including reasonable provision for future maintenance and repairs) for the

payment of rates and taxes and other local authority charges for the supply of electric current, - gas, water, fuel and sanitary, and other services to the building or buildings and land, and any premiums of insurance, and for the discharge of any or fulfilment of any other obligation of the body corporate: ... "

[7] From the foregoing it is clear that the Act and the Rules make it obligatory for the defendant to make monetary contribution to the fund established by the plaintiff which monies are inter alia used towards the disbursement of the plaintiff.

[8] The defendant in his affidavit resisting summary judgment does not deny liability against the plaintiff but only alleges that the legal fees are untaxed and included in the capital amount claimed by the plaintiff. Further that the legal fee of R150,00 on the 15 June 2017 which is also un-taxed is included by the plaintiff.

[9] Mr Marais contended that in the alternative if court is not include to order payment as prayed for the plaintiff: the court can deducted the amount the defendant deem as legal fees which are not taxed and order the payment from the deducted amount

[10] The legal fees which the defendant refers to are part of the agreement that the plaintiff concluded with the Trafalgar Property Management for Levy Solution , which governs the relation between plaintiff and the defendant. The agreement stipulated that in the event of unpaid levies owed by the owners to the Body Corporate (as it is the case in casu) the following fees must be recovered amongst others includes;

10.1. Final letter of demand – R150,00

10.2. Summons pending – R150,00

10.3. Legal monitoring foe – R142.50

10.4. Interest

- prime plus 6% per annum

[11] There is no clause in the agreement which makes provisions for the legal fees to be taxed as such the contention by Mr Singh is with no merit. The parties further agreed on a prime plus 6% per annum in the event of non- payment or the levies and the contention by Mr Singh that the interest charged is .. double interest" it is with no merit.

[12] In Maharaj v Barclays National Bank Ltd 1976

(1) SA 418 (A -D) at p 426 Corbett JA stated[1]; "Accordingly, one of the ways in which a defendant may successfully oppose a claim for summary judgment is by satisfying the court by affidavit that he has a bona fide defence to the claim. Where the defence is based upon facts in the sense that material facts alleged by the plaintiff in his or new facts are alleged by the plaintiff in his summons or combined summons are disputed our new facts are alleged constituting a defence, the court does not attempted to decide these issues or to determine whether or not there is a balance of probabilities in favour of the one party or the other. All that the court enquires 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 facts so disclosed the defendant appears to have. as to either the whole or part of the claim, a defence 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. The word "fully", as used in the contended of the Rule (and its preseasons). has been the case of some judicial controversy in the past. It connotes. in my view, that. while the defendant need not deal exhaustively with the facts and the evidence relied upon which it is based with sufficient particularity and completeness to enable the court to decide whether the affidavit disclose a bona fide defence. (see generally. Herbs Dyers (Pty) Ltd v Mohammed and Another [2] ; Caltex Oil (S.A) Ltd v Webb and Another[3] ; Amend and Another v Shepstone[4]. At the same time the defendant is not expected to formulate his opposition to

the claim with the precision that would be required of a plea, nor does the court examine it by the Standard of pleadings (See. Estate Potgieter v Elliot[5] ; Herb Dyers case[6])”

;

[13] In Joob Joob Investment v Stocks Mavundla Zele Navsa JA stated[7] "The rationale for summary judgment proceedings is impeccable. The procedure is not intended to deprive a defendant with a triable issue or a sustainable defence of her / his day in court. After almost a century of successful applications in our courts, summary judgment proceedings can hardly continue to be described as extraordinary. Our court, both of first instance and appellate level, have during that time rightly been trusted to ensure that a defendant with a triable issue is not shut out. In the Maharaj case Corbett JA[8] was keen to ensure, first, an examination of whether there has been sufficient disclosure by a defendant of the nature and grounds of his defence and the facts upon which it is founded. The second consideration is that the defence so disclosed must be both bona fide and good in law. A court which is satisfied that the trust holder has been crossed is then bound to refuse summary judgment. Corbett JA also warned against requiring of a defendant the precision opposite to pleadings. However, the learned judge was equally astute to ensure that recalcitrant debtors pay what is due to a creditor.”

[14] The defendant opposed a claim of summary judgment by deposing to an affidavit. However, it is my considered view that the defendant failed to set out a defence which is good in law and his affidavit resisting summary judgment. The defendant does not raise any defence relating to outstanding levies in his affidavit which is an indication that he is indebted to the plaintiff with regard to the levies due to the plaintiff. The rest of the defences relating to payment of legal fees and interest is adequately provided in the agreement entered by the plaintiff and Tragar Property Management

Property limited (Levy solution and Management Agreement). I therefore find no merit in the defence raised by the defendant.

ORDER

[15] I accordingly make the following order;

(1) Draft order marked “X” as amended is made on order of court.

MJ MOSOPA

ACTING JUDGE OF THE

HIGH COURT

Appearances

For Plaintiff

: Adv H Marais

Instructed by

: Rorich, Wolmarans and Luderitz Inc.

For Defendant

: In person

Date or hearing : 17 October 2018

Date of Judgment : 14 December 2018

(GAUTENG DIVISION, PRETORIA)

On 17 October 2018 before the Honourable Justice Mosopa

Case number : 25232/2018

In the application between:

THE BODY CORPORATE OF UMOYA

APPLICANT /PLAINTIFF

LUNESH SINH

RESPONDENT/DEFENDANT

DRAFT ORDER

After having read the documents filed and after having heard the counsel on behalf of the Applicant and the Respondent in person, Summary Judgment is granted against the Respondent and the following order is made:

1. Payment in the amount of R52 128,55;
2. Interest on the amount of R52 128,55 at a rate of 16% per annum, from date of service of summons to date of final payment;
3. Costs of suit, on the applicable magistrate court scale.

BY COURT

REGISTRAR

[1] 1976 (1) SA 418 (A-D) at p 426

[2] 1965 (1) SA 31 (T)

[3] 1965 (2) SA 914 (N)

[4] 1974 (2) SA 462 (N)

[5] 1948 (1) SA 104 (C) at p 1087

[6] Supra at p 32

[7] 2009 (5) SA 1 (SCA) at para 32

[8] At 425 G-426 E

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