
SOUTH AFRICA / JUDGMENT

De Agrela and Others v Dippenaar and Another (12/42384) [2013] ZAGPJHC 83 (11 March 2013)

[2013] ZAGPJHC 83

COURT

South Gauteng High Court, Johannesburg

BEFORE

Molahlehi

CASE / FILE NUMBER

12/42384

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THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

REPUBLIC OF SOUTH AFRICA

Case No:12/42384

DATE:11/03/2013

In the matter between:

ANTONIO PERREIRA DE AGRELA First Applicant

MARCO JORGE DE AGRELA Second Applicant

GMR FRUIT AND VEG CC Third Applicant

TONY DE AGRELA PROPERTIES (PTY) LTD Fourth Applicant

And

EUGENE DIPPENAAR First Respondent

SIMAO ARAUJO Second Respondent

Heard: 15 February 2013

Delivered: 12 March 2013

Summary: Application for summary judgment. Respondent's defence that the agreement was signed in the other party's attorneys'

offices has no merit. No basis in law or contract that the plaintiff's attorneys had a duty to advise respondents as to the contents of the agreement.

judgment

Molahlehi AJ

This is an application for summary judgment in which the plaintiffs are claiming payment of certain amounts from the defendants arising from the settlement agreement concluded between the parties. The settlement agreement was consequent to the cancellation of the agreements between the parties and the acknowledgement of indebtedness to the plaintiffs by the respondents.

The liability of defendants is set out in the settlement agreement. And arising from that the plaintiffs claim the following: In terms of claim "A" it is alleged that the first and second defendants failed to pay the plaintiffs the amount of R365 094.61 which amount was due to the that plaintiff's creditors. In claim "B" the first and second defendants are alleged to have failed to pay third plaintiff the amount of R 409 489.60, being the amount due and owing by the third plaintiff to the creditors. In claim "C" it is alleged that the first and second defendants failed to pay the first, second and third plaintiff's the amount of R472386.00 which is due and owing to the first, second and third plaintiffs. And claim "D" concerns failure by the first and second defendants to pay the fourth plaintiff an amount of R 603744,68 which is due and owing to the fourth plaintiff.

The defendants in opposing the summary judgment set out their defence in the following terms:

"5. I confirm to this Honourable Court that the First and Second Plaintiffs/Applicant entered into a settlement agreement with the First and Second Defendants/Respondents, at the offices of the First and Second Plaintiff/Applicant attorney of record.

6. I confirm that at the time when the Second Defendant/Respondent entered into the settlement agreement with the First and Second

Plaintiff/Applicant, the Second Defendant/Respondent did not have legal representation present and was not fully aware of the agreement

to which he was signing.

7. I submit that when signing the settlement agreement as mentioned above, my legal representation was not present and as a result I was not aware that the goods for which I was signing for, where (sic) perishable goods, as the agreement was not properly explained."

The requirement for a successful opposition to a summary judgment is set out in rule 32

[3] of the Uniform Court Rules, which reads as follows:

"(a) . . .

- (b) satisfy the court by affidavit . . . or with the leave of the court by oral evidence of himself or any other person who can swear positively to the fact that he has a bona fide defence to the action; such affidavit or evidence shall disclose fully the nature and grounds of the defence and the material facts relied upon therefore.”

The essence of the above rule is that the defendant has to satisfy the court that he or she has a bona fides defence. The bona fide defence has to be set out with such particularity and completeness such that the Court is persuaded that a bona fide defence has been disclosed and that if proved at trial that would constitute a defence to the plaintiff’s claim.¹

In the present case the defence of the defendants is that they signed the agreement in question at the plaintiffs’ attorneys’ offices and that the agreement was not explained to them.

Although in the affidavit the defendants state that the agreement was signed in the plaintiffs’ attorneys’ offices, to the contrary the agreement reflects that it was signed by the first respondent at Bedfordview and by the second defendant at City Deep. It has not been disputed that the offices of the plaintiffs’ attorneys are at Rosebank. Although counsel for the defendants persisted in argument that the agreement was signed in the attorneys’ offices he did not provide any satisfactory explanation for the glaring contradictions between what appears on the signed agreement and the fact the plaintiffs’ attorneys’ offices are not at the same place as that which is reflected in the agreement. In addition the defendants do not say on what basis the plaintiffs’ attorneys were obliged to advise them about the contents of the agreement. There is also no evidence that the defendants were denied the opportunity to consult with their attorneys before signing the agreement.

The other point raised by the second defendant is that he was not aware that the goods were perishable. The basis of this defence is not clear when regard is had to what is stated at paragraph 2 of the settlement agreement which reads as follows:

“Attached hereto marked “A” is a schedule of the close corporation for the period 1 DECEMBER 2011 until 31 MAY 2012 prepared by the purchasers. Should any other liabilities arise which are not reflected on schedule “A” and which were incurred by the close corporation or the purchasers in the conduct of the business during the aforesaid period, the purchasers shall remain jointly and severally liable for payment of those liabilities and indemnify the sellers and the close corporation against any claim made against them in respect of those liabilities.”

The defendants do not say who is to blame for their ignorance about the presence of the perishable goods if that was indeed the case.

In my opinion based on the above analysis, the defendants have failed to disclose fully their defence and therefore the summary judgment application stands to succeed.

In the premises the following order is made:

Claim A

The second defendant is to pay the third plaintiff the amount of R89 810.51 with interest at the rate of 15.5% a tempore morae.

Claim B

The second defendant is to pay the third plaintiff the amount of R409 489.60 with interest at the rate of 15.5% a tempore morae.

Claim C

The second defendant is to pay the first, second and third plaintiff the amount of R472 386.00, with interest at the rate of 15.5% a tempore morae.

Claim D

The second defendant is to pay the fourth plaintiff the amount of R603 744.8 with interest at the rate of 15.5% a tempore morae.

Costs

The defendants are to pay the costs of the suit jointly and severally the one paying the other to be absolved.

Molahlehi AJ

Acting Judge of the South Gauteng High Court.

APPEARANCES

For the APPLICANT: R T P Ndou instructed by Fluxman Inc

For the RESPONDENT: Adv A T Ho-Lin instructed by Saleem Ebrahim Attorneys

1 See Ciliers, Loots and Nel The Civil Practice of the High Courts of South Africa (5th ed, Juta) at page 532.

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