

SOUTH AFRICA / JUDGMENT

Firststrand Bank Limited (FNB Division) v Schalwyk (41874/2017) [2018] ZAGPPHC 554 (1 August 2018) [2018] ZAGPPHC 554

COURT

North Gauteng High Court, Pretoria

BEFORE

E.M. Kubushi

CASE / FILE NUMBER

41874/2017

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REPUBLIC

OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH
AFRICA

GAUTENG DIVISION, PRETORIA

(1)

NOT

REPORTABLE

(2)

NOT OF

INTEREST TO OTHER JUDGES

(3)

REVISED.

CASE

NO : 41874/2017

1/8/2018

In

the matter between: FIRSTRAND
 BANK LIMITED (FNB DIVISION)
 APPLICANT
 and
 SAMUEL

SCHALWYK (ID: [...])
 RESPONDENT

JUDGMENT

KUBUSHI J

- [1] This opposed summary judgment application emanates from a summons in which the applicant is claiming an amount of R813 683, 69 against the respondent in respect of three mortgage loan agreements entered into between them. In the summons the applicant is claiming that the respondent is in breach of the said mortgage loan agreement s.
- [2] The respondent is resisting the summary judgment application. He denies the applicant's contention that he does not have a bona fide defence to the applicant's claim and has entered appearance solely to delay the finalisation of the applicant's claim. The respondent has, in his answering affidavit, raised a number of defences, but , before me the other defences were conceded and only one defence was argued .
- [3] The nub of the respondent' s defence is that the amount of indebtedness is not clear. The contention is that incorrect interest rates, higher than those agreed in terms of the mortgage bonds, were applied and put doubt as to the real amount due and payable by him.
- [4] In a summary judgment application, a respondent is required in accordance with uniform rule 32 (3) to deliver an affidavit which fully discloses the nature and grounds of its bona fide defence and the material facts on which such defence is based. The respondent is not necessarily required to prove the defence. All it is required to do is to set up facts which would constitute a defence at the trial.[1]
- [5] I am sufficiently persuaded that the respondent has alleged facts which are material and which if proved at the trial will constitute a defence to the applicant's claim. The respondent should on the premises be granted leave to defend the matter.
- [6] It is trite that where summary judgment application is refused costs are ordered to be costs in the cause. I see no reason to deviate from this rule. Costs in this matter should be in the cause.
- [7] In the circumstances the application for summary judgment is dismissed and costs are costs in the main case.

E.M . KUBUSHI

JUDGE OF THE HIGH COURT

APPEARANCE :

Counsel for Applicant : Adv. J. Minaar

Instructed by

: Hammond Pole Majola

Counsel for Respondent : Adv S. F. Fisher-Kleie

Instructed by

: Locketts Attorneys

Date heard

: 30 May 2018

Date of judgment

: 01 August 2018

[1] See Breitenbach v Fiat SA (Pty) Ltd 1976 (2) 226 (T) and Maharaj v Barclays National Bank Limited 1976 (1) SA 418 (A).

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