

SOUTH AFRICA / JUDGMENT

Hagemann N.O. v Hagemann N.O. and Others (1427/2017) [2017] ZAFSHC 129 (10 August 2017) [2017] ZAFSHC 129

COURT

Free State High Court, Bloemfontein

BEFORE

C Reinders

CASE / FILE NUMBER

1427/2017

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IN

THE HIGH COURT OF SOUTH AFRICA,
FREE
STATE DIVISION, BLOEMFONTEIN

Case

No: 1427/2017

In

the application between:

JOHANNA-MARIE

HAGEMANN

Plaintiff

and

REINHARD

HAGEMANN N.O.

1st Defendant

HELENA

MAGDALENE HAGEMANN

2nd Defendant

CHARLES

LEWIS HORATIO VERTUE

3rd Defendant

(In

their capacity as trustees of the Hagemann trust)

(IT

1398/1997)

JUDGMENT

BY: C REINDERS, J

HEARD ON: 3 AUGUST 2017

DELIVERED ON: 10 AUGUST 2017

- [1] The Plaintiff is Johanna-Marie Hagemann, a medical practitioner (Dr Hagemann). The Defendants are the three trustees of the Hagemann Trust (the Trust) and are sued in such capacity. They are Reinhard Hagemann (1st Defendant, Mr Hagemann), Helena Magdalene Hagemann (2nd Defendant, Ms Hagemann) and Charles Lewis Horatio Vertue (3rd defendant, Mr Vertue). Dr Hagemann issued summons against the Defendants on 23 March 2017 for payment in the amounts of R 500 170.27 (Claim 1) and R 1 054 79.27 (Claim 2) respectively. Interest on the said amounts as well as costs are also prayed for.
- [2] After a notice of intention to defend was filed by Mr Vertue Dr Hagemann now moves for summary judgment against the Defendants. Mr Vertue opposed the application averring that the Trust has a bona fide defence against the claim by Dr Hagemann.
- [3] According to Dr Hagemann, in respect of the Claim 1, she entered into an oral loan agreement with the Trust represented by Mr Hagemann on 9 October 2014. The terms and conditions of the loan agreement entails that the amount of R 1 000 000.00 would be advanced to the Trust who will repay her. The amount is repayable immediately, with interest to be levied. The sum was lend and advanced to the Trust, and repayment of R 635 700.00 in eight separate instalments took place. At 22 March 2017 the Trust is indebted to Dr Hagemann in the amount of R 500 170.27 plus interest.
- [4] Claim 2 is for the amount of R 1 000 000.00 plus interest. On 5 September 2016 an oral loan agreement was entered into by Mr Hagemann, representing the Trust, on the same conditions as the loan agreement in respect of Claim 1. Although the money was lend and advanced to the Trust after conclusion of the agreement, the Trust has not repaid any of the money lend and advanced. As on 22 March 2017, it is indebted to Dr Hagemann in the amount of R 1 054 794,52 plus interest.
- [5] Dr Hagemann's affidavit in support of summary judgment is on face value signed at New St Killarney and sworn to before a solicitor from Downing Courtney and Larkin Solicitors. I have my serious doubts whether this is an attorney of South Africa and therefore a properly appointed commissioner of oaths in this country. I was not addressed on this issue and accepts for purposes hereof that the affidavit had been properly attested to.
- [6] It is trite that a defendant in summary judgment proceedings does not have to convince a court of the truth of its defence. Probabilities play no role at this stage. Should a defendant place sufficient facts before court which would constitute a defence in the main action, summary judgment should be denied.

See: Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A) at 426A

Breitenbach v Fiat SA (Edms) Bpk 1976 (2) SA 226 (T) at 228B

- [7] I turn to the defence proffered by the 3rd Defendant. Mr Vertue confirms that he has been an independent trustee of the Trust since 16 August 2011. He states that the Trust has never borrowed money from Dr Hagemann nor entered into any agreement. At no stage did the trustees resolve to borrow money from Dr Hagemann. He confirms that no such money has been paid into the Trust's banking account.
- [8] Mr Groenewald on behalf of Dr Hagemann pressed hard upon me to find that no bona fide defence was tendered by Mr Vertue, whereas Mr Lubbe on behalf of the 3rd Defendant argued that the Plaintiff does not have a clear case against the Defendants. I am satisfied that the defence stated by Mr Vertue would constitute a good defence should it be proven at the main trial. The Plaintiff certainly does not have an unanswerable case.
- [9] Accordingly I grant the following orders:
1. The application for summary judgment is dismissed.
 2. Leave is granted to the Defendants to defend the action.
 3. Costs to stand over.

C. REINDERS, J

On behalf of the Plaintiff: Adv. W.J. Groenewald

Instructed by:

Marius Muller Hendricks Ing

c/o Kramer Weihmann & Joubert Inc

BLOEMFONTEIN

On behalf of the Defendants: Adv. E.G. Lubbe

Gous Vertue & Ass Inc

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Prepared on 12 October 2026 · Esheria