

SOUTH AFRICA / JUDGMENT

Nedbank Limited v George (2022/025492) [2023] ZAGPJHC 992 (1 September 2023)

[2023] ZAGPJHC 992

COURT

South Gauteng High Court, Johannesburg

BEFORE

C H J Badenhorst

CASE / FILE NUMBER

2022/025492

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

CASE

NO: 2022/025492

NOT

REPORTABLE

NOT

OF INTEREST TO OTHER JUDGES

NOT

REVISED

01/09/23

In

the matter between:

NEDBANK

LIMITED

Applicant

and

BLAKE

ARTHUR GEORGE

Respondent

JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is deemed to be 10h00 on the 1st of September 2023

[1] This is an application for summary judgment in terms of Rule 32.

[2] In its combined summons issued on 19 September 2022 (filed on caselines on 30 January 2023), the plaintiff claims the sum of R 256 069.15

with interest and special costs as well as an Order declaring immovable property owned by the respondent to be specially executable

in terms of Rule 46 (1) (a) of the Rules.

[3] Plaintiff's cause of action is founded upon an agreement of loan entered between the parties and a first mortgage bond over respondent's property securing the loan.

[4] The defendant, who appears in person, filed a notice to defend the action on 3 November and a plea on 29 November 2022.

[5] In defendant's plea, he complains that the summons that was served on him was materially deficient in that several parts of the annexures relied on by the plaintiff in its particulars of claim were omitted. He lists the numerous paragraphs of the attachments relied on by plaintiff that were omitted from the version of the combined summons served on him.

[6] On 20 December 2022, the plaintiff filed an application for summary judgment. In paragraph 6 of his affidavit, the plaintiff's representative addresses the complaint made in defendant's plea and states the following:

"In a number of paragraphs, the defendant stated that pages of the agreement, the mortgage bond and the distressed restructure agreement

was [sic] omitted. It is not clear how this was possible but for completeness's sake, the home loan agreement, the mortgage bond and the distressed

restructure agreement, properly referred to and relied upon in the particulars of claim, are attached hereto as "A", "B" and "C".

[7] On 22 January 2023, defendant delivered his opposing affidavit in which he reiterates (the pleaded complaint) that the original summons served on him was materially defective.

- [8] As appears from the passage quoted above, the plaintiff has not made any attempt to disprove the contention that service on the defendant was materially deficient, as claimed by him. The plaintiff could have done so by presenting evidence from the Deputy Sheriff's official who effected service on defendant or by other means, but no evidence was put forward. Instead, the plaintiff attempted to "rectify" the problem by attaching the complete annexures to its affidavit filed in support of summary

judgment.

- [9] Rule 32 (2)

- (b) prescribes what a plaintiff is permitted to do in its affidavit supporting summary judgment, namely:

"The plaintiff shall, in the affidavit referred to in subrule (2)(a), verify the cause of action and the amount, if any, claimed, and identify any point of law relied upon and the facts upon which the plaintiff's claim is based, and explain briefly why the defence as pleaded does not raise any issue for trial."

- [10] A plaintiff is not permitted, in the prescribed affidavit filed in support of summary judgment, to attempt to amend or supplement material deficiencies in the papers served on a defendant.
- [11] The question at this stage of the proceedings is whether the defendant's complaint (which I am unable to reject on what is before me) establishes a bona fide defence to the action.
- [12] In my view the answer is in the affirmative and it follows that the application for summary judgment must fail.
- [13] I direct the costs to be in the cause.
- [14] I accordingly issue the following Order:
- a. The application for summary judgment is dismissed;
- b. The costs of the application will be costs in the cause of the action.

C H J BADENHORST

ACTING JUDGE OF THE HIGH COURT

JOHANNESBURG

APPEARANCES

DATE OF HEARING: 29 August 2023

DATE OF JUDGMENT: 1 September 2023

APPLICANTS' COUNSEL:

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RESPONDENT IN PERSON

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