

SOUTH AFRICA / JUDGMENT

ABSA Bank Ltd v Van Der Walt N.O. and Another (99/17575) [2000] ZAGPHC 31 (27 November 2000) [2000] ZAGPHC 31

COURT

High Courts - Gauteng

BEFORE

Willis

CASE / FILE NUMBER

99/17575

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IN THE HIGH COURT OF SOUTH AFRICA

JOHANNESBURG

CASE NUMBER:99/17575

DATE:2000-11-27

In the matter between

ABSA BANK LTD..... Plaintiff

and

VAN DER WALT, THEUNIS PETRUS N.O.....First Defendant

VAN DER WALT, LYNETTE N.O.....Second Defendant

JUDGMENT

WILLIS. J: The writ amounts of R393 578,55 and R760 868,04 together with interest are claimed against both defendants. The claim arises from a loan which the plaintiff made to a Family Trust of which the two defendants were trustees. The loan was secured by a property and also by two separate suretyship documents signed by both the parties. It appears clear that both the defendants are themselves practising attorneys.

The trial was earlier postponed on 17 May 2000. The reasons for the postponement on 17 May were that the first defendant was too ill to attend the trial.

The matter was set down on 16 August 2000 for hearing on 24 November

2000. It would appear from evidence led by Mr Bothma, the attorney

for the plaintiff, that on Tuesday last week, in other words, 21 November 2000, he was informed by the attorney acting for the first and second defendant that the first defendant would be too ill to attend the trial.

It would appear that on the date of the set down there was no evidence whatsoever put before the court in order to enable it to determine whether or not a postponement should be granted.

The matter was enrolled before my brother Navsa J in order for him to determine whether or not to grant the postponement, I am reliably

informed by counsel from the Bar that my brother Navsa J indicated that he would at least require an affidavit. This affidavit was not produced on 24 November, nor was it available when court proceedings commenced this morning at 10:00. Nevertheless, sometime between 10:00 and the present an affidavit by a Dr Johannes Lodewickus Tait was submitted. What appears in a scrawled medical certificate by him it reads as follows:

"Heil die Leser

Mm van der Walt ly aan (illegible) peptiese gastritis asook erge depressie. Hy is deur my na Dr Isaacs en Dr Brink, Psigiater verwys

wat horn tans in Flora Clinic behandeel. Hy is nie in staat

om enige hofverrigtinge by te woon vir minstens die volgende tien dae nie. Die uwe."

Mr Roux, who appears for the plaintiff, correctly adopted the view that he was not obliged to accept the affidavit tendered on behalf of the first defendant. In the circumstances it is hardly surprising that he has taken such an attitude. After all, this matter was previously postponed for essentially the same reason. He is entitled, in my view, to cross-examine the doctor to find out when it is likely that the first defendant would be in a position to proceed with the trial and also to test the veracity of the allegation that the first defendant is indeed so ill that he cannot on the second postponement opportunity give evidence with regard to his defence.

The defence, as I understand it, is one of a denial of his signature which is really a rather simple matter over which to testify and should not entail exhausting cross-examination over several days. There is also a defence that the rate of interest charges is incorrect but this is ancillary. In any event, the defence is that the agreed rate of interest was 1 per cent below prime. This, prima facie, is a most unusual defence. Most ordinary customers of banks have to pay the prime rate plus a percent or two, depending on their creditworthiness.

I asked Mr Bothma whether the doctor was available to testify and he informed me that he was no. It is common cause that he has not been in attendance at court on Friday, the 24th, nor is he in attendance today.

Accordingly, in my view, a proper case is made out for the dismissal of the application for the postponement, with costs, and such an order is accordingly made.

ON BEHALF OF PLAINTIFF:ADV ROUXInstructed by

ON BEHALF OF DEFENDANTS: ADV BOTHMA

Instructed by:De Vries Incorporated

DATE OF JUDGMENT:27 NOVEMBER 2000

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Prepared on 13 October 2026 · Esheria