IN THE HIGH COURT OF SOUTH AFRICA
(Witwatersrand Local Division)

REPORTABLE

Case No: A3040/2006

In the matter between:

GILLIAN PATRICIA LANGEVELD
Appellant (Defendant in the Court *a quo*)

and

UNION FINANCE HOLDINGS (Pty) LTD
Respondent
(Plaintiff in the Court *a quo*)

JUDGMENT

WILLIS J:

[1] The appellant, who was the defendant in the Court *a quo* (*per* Mrs A. Davie in the Roodepoort Magistrate's Court), appeals against the judgment of that Court in terms of which she was ordered to

pay the plaintiff the sum of R52 704,25 together with interest thereon from 19 November 2004 to date of payment and costs. The claim of the plaintiff (in the Court a *quo*, and who is now the respondent) arose from an agreement which the defendant had allegedly signed as surety.

[2] Although the appellant raised a number of grounds of appeal in the Notice of Appeal, in her Heads of Argument, only two grounds were persisted with:

(i) The plaintiff, had failed to prove, on a balance of probabilities, that the defendant's name appeared on the document in question in the "SURETY" section of the document when she signed it; and

(ii) One Bridget Griesel, the bookkeeper, of Asset Protection Consultants Guarding CC at the relevant time, did not act as the agent of the defendant which she negotiated the agreement between Asset Protection Consultants Guarding CC and the plaintiff but as the agent for Asset Protection Consultants Guarding CC.

[3] The plaintiff, as cessionary, claimed from the defendant arising from a document known as the "Master Rental Agreement" which, it is common cause, was entered into between OEP Financial Services (Pty) Ltd (which had been the cedent) and Asset Protection Consultants Guarding CC.

[4] At all times relevant to this dispute, the defendant was the sole member of Asset Protection Consultants Guarding CC. On the defendant's own version of events, a new building had been bough fort Protection Consultants Guarding CC and it was in the process of moving premises. They needed a new telephone system to be installed. She instructed Asset Protection Consultants Guarding CC's bookkeeper, Bridget Griesel, to arrange with OEP Financial Services (Pty) Ltd for the acquisition and financing of the telephone system. This gave rise to the signing of the Master Rental Agreement. The defendant did not call Bridget Griesel as a witness.

[5] Asset Protection Consultants Guarding CC acquired the telephone system on a lease basis. On the front page of the Master Rental Agreement, the appellant signed the document in five different places or "sections" (which could also be described as "blocks"):

(i) First, she agreed to lease the telephone system;

(ii) Secondly, she signed a debit order authorisation;

(iii) Thirdly, she signed as surety;

(iv) Fourthly she agreed to the schedule of payments;

(v) Finally, she warranted that she was authorised to enter into the agreement with OEP Financial Services (Pty) Ltd on behalf of Asset Protection Consultants Guarding CC.

[6] Under the "suretyship section", the appellant's full names,

physical address at her home in Ruimsig and her identity number were recorded. The relevant recordal of the agreement reads simply, “I hereby bind myself as surety and co-principal debtor in accordance with the suretyship terms and conditions overleaf”. Immediately below, appears the appellant’s signature. The suretyship section or block hardly skulks away furtively. It is not hidden in “fine print”. It is not buried in a mountain of legalese or jargon. The overleaf bears the appellant’s initials as well as those of Morné Le Grange, the sales executive of OEP Financial Services (Pty) Ltd who signed the agreement on behalf of OEP Financial Services (Pty) Ltd, as well as the initials of various witnesses. The initials on the overleaf relate to clauses which were pertinently amended, at least one of which was so done in favour of Asset Protection Consultants Guarding CC and the appellant. The appellant’s signature appears in this “suretyship section” or “block”. All this is common cause.

[7] Morné Le Grange testified that the appellant signed the document in question in his presence. The appellant denied this. She said that she “just signed where the crosses were” “because I was in a hurry”. She says Bridget Griesel told her to sign “there, there, there, there and there”. There are no crosses apparent on the document in question. In my opinion, nothing turns on whether or not the appellant signed the document in Le Grange’s presence or not. Indeed, if he was not present, it eliminates (or at very least

substantially reduces) the possibility or fraud in the form of the appellant being informed by a representative of OEP Financial Services (Pty) Ltd that she was not signing a suretyship document when, in fact, that is what she did. In any event, that is not her case. The appellant says no one told her she was signing as surety and that she would not have so signed had she been aware of the fact. She testified that "This document was not completed when I signed it"

[7] In the Court *a quo* it was submitted, on behalf of the defendant, that the document fell foul of the provisions of section 6 of the General law Amendment Act, No. 50 of 1956. The relevant portion thereof reads as follows:

"No contract of suretyship entered into after the commencement of this Act, shall be valid, unless the terms thereof are embodied in a written document signed by or on behalf of a surety." The proposition needs merely to be stated to be rejected. The learned magistrate correctly rejected it.

[8] The appellant placed particular reliance on the following cases:

Fourlamel (Pty) Ltd v Maddison[1];
Baring Eiendendomme Bpk v Roux[2]; and
S*tewart & Lloyds v Croydon Engineering and Others*[3] .

[9] The *Fourlamel* case is authority for the proposition that the identification in writing of the principal debt, the debtor and creditors (which may include a co-surety) are essential

1 1977 (1) SA 333 (A);
2 [2001] 1 All SA 399 (SCA)
3 1981 (1) SA 305 (W)

requirements in order to constitute a valid and binding deed of suretyship. The facts of this case are clearly distinguishable from those in the *Fourlamel* case. I consider the decisions in *Sneech v Hill Kaplan Scott and Partners* [4], *Sapirstein and Others v Anglo Shipping Co (SA) Ltd*[5] and *Stiff v Q Data Distribution (Pty) Ltd*[6] all of which went against the surety, to be more relevant to this case. The reliance on the *Baring Eiendomme* case relates to the agency point with which I shall deal later. The reliance on the *Stewart & Lloyds v Croydon Engineering* case arises because it was held therein that the *onus* is on the plaintiff to prove that when a surety signs a suretyship document, the formal requirements for its validity must appear therein.

[10] The probabilities favour the plaintiff's version that, at the time when the defendant signed the document, all relevant details, including the formalities had been filled in already. How else does one explain the detail of the overleaf being initialled and the detail of the defendant's personal particulars relating not only to her full names but also her address and identity no. (over which her signature was inscribed)?

[11] The appellant is no "babe-in-the-woods", never mind an illiterate. She is an accomplished businesswoman of many years'

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4 1981 (3) SA 332 (A) at 339F-G
5 1978 (4) SA 1 (A) at 12
6 2003 (2) SA 336 (SCA)

standing. There is a strong *praesumptio hominis* (popular presumption or presumption common among persons) that anyone who has signed a document, had the *animus* (intention) to enter into the transaction contained in it and she is burdened with the *onus* of convincing the Court that she in fact had not entered into the transaction by virtue of the maxim *caveat subscriptor* (a person who signs must be careful).[7] As A.J. Kerr says[8]: "It is a sound principle of law that a man, when he signs a contract, is taken to be bound by the ordinary meaning and effect of the words which appear over his signature."

[12] In the case of *Stiff v Q Data Distribution (Pty) Ltd* referred to above, where the surety similarly claimed that he was unaware of the existence of the suretyship provision in the document in question, the Court held (at para [16]) that the *onus* was on the surety to discharge the *onus* of proving that he was not aware of the suretyship and, *in casu*, had failed to discharge that *onus*. Following this authority, I conclude that the appellant has failed to discharge the *onus* of proving that she was unaware that she was signing an undertaking as surety.

[13] Let it be accepted that the learned magistrate either may or

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7 See, *Malherbe v Ackermann and Others* (2) 1944 OPD 91 and Wessels The Law of Contract ক1784). And see, also, for example, the following cases where the principle would appear to have been applied without direct reference to the maxim of *caveat subscriptor*: *George v Fairmead (Pty) Ltd* 1958 2 SS 465 (A)*; Bhikhagee v Southern Aviation (Pty) Ltd* 1949 (4) SA 105 (e), esp at 107; *Roomer v Wedge Steel (Pty) Ltd* 1998 (1) SA 167 (W) and *Tesoriero v Bhyo Investments Share Block (Pty)* 2000 (1) SA 167 (W), esp. at 170C-E; 178G-H; and 179-G

8 The Principles of the Law of Contract, 6th ed, p102

may not have erred when she said in her judgment that “It is evident that the bookkeeper, be it directly or indirectly, acted as agent for the defendant.” Let it also be accepted that, at all relevant times, in her dealings with OEP Financial Services (Pty) Ltd, Bridget Griesel was acting as agent for Asset Protection Consultants Guarding CC although not the appellant herself. I nevertheless fail to see the relevance of these points to the issue in the case. Bridget Griesel did not sign the document at all. The appellant did. When she signed as surety in the “suretyship section” or “block”, she clearly signed it in her personal capacity. Even if it is accepted that, contrary to the express evidence of Morné Le Grange, Bridget Griesel told the appellant to sign “there” (i.e. the “suretyship section” or “block”), and the appellant did so in consequence thereof, that can not exonerate the appellant from taking responsibility for putting her signature where she it (and incurring obligations as a result thereof). It must be borne in mind that it certainly was no party’s case that Bridget Griesel was acting as agent for OEP Financial Services (Pty) Ltd.

21] The following is the order of this Court:

The appeal is dismissed with costs.

DATED AT JOHANNESBURG THIS 1st DAY of FEBRUARY, 2007.

N.P. WILLIS

JUDGE OF THE HIGH COURT

I agree.

C.G. LAMONT

ACTING JUDGE OF THE HIGH COURT

Counsel for the Appellant: *L.J. Du Bruyn*
Attorney for the Appellant: Leon Maartens Inc

Counsel for the Respondent: *J.J Durandt*
Attorney for the Respondent: Jay Mothobi Inc

Date of Hearing: 30th January, 2007
Date of Judgment: 1st February, 2007