

IN THE HIGH COURT OF SOUTH AFRICA
(SOUTH GAUTENG HIGH COURT, JOHANNESBURG)

CASE NO: 08400/2010

DATE: 2012-02-08

In the matter between

ALBARAKA BANK LIMITED

Applicant

and

HALAAL ROYAL SNACKS (PTY) LIMITED

& FIVE OTHERS

Respondents

JUDGMENT

WILLIS J:

[1] This morning the application for a summary judgment against the fourth respondent was postponed *sine die* with costs reserved. The matter proceeds against the remaining respondents namely the first, second, third, fifth and sixth respondents. The applicant claims against the respondents as follows:

In respect of Claim A:

- (1) Judgment in the sum of R7 127 046-49 against
First, Second, Third, Fifth and Sixth
Respondents, jointly and severally, one or
more paying, the other(s) to be absolved;
- (2) Erf 43 Parkview Township is declared to
be specially executable to the extent of

R697 500-00 and in the further sum
of R 139 500-00;

- (3) That the First Respondent pay costs of
suit on the party and party scale;
- (4) That the Second, Third, Fifth and Sixth
Respondents pay costs of suit on the
attorney and own client scale;

In respect of Claim B:

- (1) Judgment in the sum of R529 196-41 against
Second Respondent;
- (2) That Erf 43 Parkview Township be
declared to be specially executable to the
extent of R3 200 000-00 and in the
further sum of R800 000-00;

(3) That the Second Respondent be ordered to pay costs of suit on the attorney and own client scale.

[2] The applicant originally issued a summons in this matter against the respondents. The respondents who were the defendants in this matter (I am referring here to all the respondents, including the fourth respondent), duly represented by attorneys, settled the matter. There were acknowledgements of debt signed by the respondents and consents to judgment for the amounts claimed.

[3] The respondents now argue that one should have regard to the underlying transaction and set aside the acknowledgement of debt. The underlying transactions are, as Mr *Hussain* (who appears for the respondents) correctly accepted, banking transactions. Furthermore, these were banking transactions that were *murabahah* according to

Sharia law.

[4] There is nothing intrinsically wrong, unlawful or contrary to public policy in banking transactions being entered according to the Sharia law. On the contrary, banking transactions according to Sharia law is a rapidly growing field of banking law. As far as I am able to gauge, what is generally known as 'Islamic banking' is being adopted by all the major banks in South Africa.

[5] When grown up commercial litigants are represented by attorneys duly admitted in the courts of South Africa, w a court should be extremely reluctant to interfere with settlements of the kind that at issue here. The whole administration of justice in this court, would be impossible without the courts being able to rely on settlement agreements. Umpteen settlements are concluded every single day in this court and the whole administration of

justice relies upon people resolving their disputes, relying to a very large extent to the intervention of their attorneys.

[6] There has been an allegation of duress raised by Mr *Hussain* in his argument today. That duress is said to consist of threats to obtain judgment. It is claimed that it is common cause between the parties that the respondents, at the time when the settlement agreements were concluded, were in the process of settling contracts with the national retail chain for the supply of their products. It is contended that a judgment against their names would have spelt financial ruin for the respondents.

[7] Mr *Hussain* submitted that the threat of financial ruin was a real threat which would have immediate consequences and probably influence the respondents to

sign the document. Mr *Hussain* relied strongly on the judgment of Nugent JA, in the case of *Medscheme Holdings (Pty) Limited v Bhamjee* 2005 (5) SA 339 (SCA) especially at paragraph [18]. In my respectful opinion there is nothing which Nugent JA said in that judgment that causes me a moment's hesitation in concluding that, in these particular circumstances, there was no duress recognised in law. The respondents cannot succeed in their claim of duress.

[8] Accordingly, judgment is given in favour of the applicant against the first, second, third, fifth and sixth respondent, as claimed in terms of both claim A and claim B.

[9] Counsel for the applicant wisely prepared a draft to reflect the correct order in the event that the applicant was successful. An order is made in terms of the draft marked 'X'. For the sake of completeness, I read out that draft order into the record so that there can be no confusion or any

problems later for the parties on the question of interpretation. It reads as follows:

‘It is ordered that:

1. In respect of Claim A:

1.1 Judgment in the sum of R7 127 046-49 is granted against First, Second, Third, Fifth and Sixth Respondents, jointly and severally, one or more paying the other(s) to be absolved;

1.2 Erf 43 Parkview Township is declared to be specially executable to the extent of R 697 500-00 and in the further sum of R 139 500-00;

1.3 First Respondent is ordered to pay costs of suit on the party and party scale;

1.4 Second, Third, Fifth and Sixth

Respondents are ordered to pay costs of suit on the attorney and own client scale;

2. In respect of Claim B:

2.1 Judgment in the sum of R 529 196-41 is granted against Second Respondent;

2.2 Erf 43 Parkview Township is declared to be specially executable to the extent of R 3 200 000-00 and in the further sum of R 800 000-00;

2.3 Second Respondent is ordered to pay costs of suit on the attorney and own client scale.'

Counsel for the applicant: Adv C.E. *Watt-Pringle* SC
(with him Y. *Alli*)

Attorneys for the applicant: M.F. Jassat Dlamini

Counsel for the respondents: Adv I. *Hussain* SC

Attorneys for the fourth respondent: Shaheed Dollie

Attorneys for the remaining respondents: Ismail Ayob

Date of hearing: 8 February 2012

Date of judgment: 8 February 2012