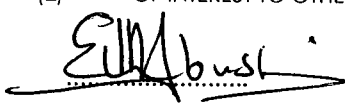
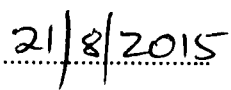


REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

20/8/15
CASE NO: 43355/15

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
 	

In the matter between:

MAEPI ANDRE EUGENE

APPLICANT

and

E ABRAHAMS

RESPONDENT

J U D G M E N T

HEARD ON: 07 AUGUST 2015

JUDGMENT ON: 21 AUGUST 2015

KUBUSHI, J

[1] In this application the plaintiff seeks an order for summary judgment against the defendant. The contention by the plaintiff's counsel is that the defence raised by the defendant is not a *bona fide* defence as required in terms of uniform rule 32 (3) (b) to resist a summary judgment application. The defendant's defence in resisting the summary judgment is that he did not receive the amount claimed.

[2] According to counsel, in order for the defence to be a *bona fide* defence, the defendant must supply sufficient material facts to show that he did not receive the amount of the loan.

[3] The parties are contesting a loan agreement entered into by the parties. It is not in dispute that a loan agreement was negotiated and concluded between the parties wherein the plaintiff was to loan to the defendant an amount of R700 000. It is also not in dispute that the said agreement was signed by both the plaintiff and the defendant and one witness instead of two witnesses. What is in dispute is the receipt of the amount of R700 000 by the defendant. Whilst the plaintiff is adamant that the defendant was given the amount of loan, it is the defendant's case, however, that he did not receive such an amount. According to the defendant's counsel there was an oral agreement between the parties that a second witness was to sign the agreement as proof that the defendant received the amount of the loan, since the second witness has not signed, it is an indication that the defendant has not received the money. His further assertion is that the date inserted in the agreement must have been inserted at a later date because the date falls on a Sunday, and he does not do business on Sunday. The date also appears to be tempered with and it is more probable that the date on the agreement was the 9 February 2012, in which event it raises the question of prescription.

[4] In a summary judgment application, where the question of whether the respondent has a *bona fide* defence arises, the court does not attempt to decide the issues or to determine whether or not there is a balance of probabilities in favour of the one party or the other. The respondent is also not required to persuade the court

of the correctness of the facts stated by him or her or where the facts are disputed, that there is a preponderance of probabilities in his or her favour.¹

[5] All that a court requires, in deciding whether the respondent has set out a *bona fide* defence, is:

- a. whether the respondent has disclosed the nature and grounds of his or her defence, and
- b. whether on the facts so disclosed the respondent appears to have a defence which is *bona fide* and good in law.

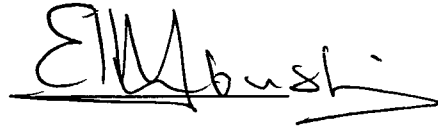
[6] It is sufficient if the respondent swears to a defence, valid in law, which if advanced may succeed on trial.²

[7] On the basis of the defence raised by the defendant I am not satisfied that the plaintiff has an unanswerable case. The defendant must be given the benefit of the doubt and be granted leave to defend the matter.

[8] In the circumstances the application for summary judgment is dismissed and costs to be costs in the application.

¹ See *Nair v Chandler* 2007 (1) SA 44 (T) at 47 B-C and *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) at 426A-E.

² See *Maharaj v Barclays National Bank Ltd* 1979 (1) SA 418 (A) at 426B and *Marsh v Standard Bank of SA Ltd* 2000 (4) SA 947 (W) at 949E-F.



E. M. KUBUSHI

JUDGE OF THE HIGH COURT

Appearances:

On behalf of the applicant:

ADV. M JAH

Instructed by:

LAMPEN ATTORNEYS

BLOCK C, EQUITY PARK

BROOKLYN

PRETORIA

On behalf of the respondent:

ADV. M SCHEEPERS

Instructed by:

SCHEEPERS' & AUCAMP ATTORNEYS

SERFONTEIN VILJOEN STREET

BROOKLYN

PRETORIA