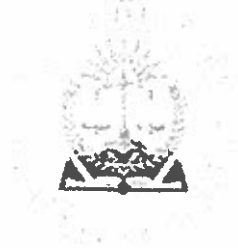


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, PRETORIA

APPEAL CASE NO: A222/2018
CASE NUMBER 32745/2017 (COURT A QUO)

(1)	REPORTABLE: <input type="checkbox"/> / NO
(2)	OF INTEREST TO OTHER JUDGES: <input type="checkbox"/> / NO
(3)	REVISED: 18/08/2020

18 AUGUST 2020

In the matter between:

MARCUS M FARMING CC

First Appellant

KGABO VIRGINIA MASENYA

Second Appellant

MATOOTO LYDIA MASENYA

Third Appellant

PAULINE MPHEFO NGOETSANA

Fourth Appellant

LESETJA SOLOMON MASENYA

Fifth Respondent

TLOU JULIA MASENYA

Sixth Respondent

and

LAND AND AGRICUTURAL DEVELOPMENT
BANK OF SOUTH AFRICA

Respondent

JUDGMENT

LAMONT, J:

[1] The respondent instituted action against the seven appellants and in due course summary judgment was granted in its favour. The respondents appealed against that judgment. The parties are referred to herein as they were in the action.

[2] The plaintiff lent and advanced monies to the first defendant pursuant to a written contract. The remaining defendants were sureties for co-principal debtors with the first defendant for the obligations of the first defendant to the plaintiff. The plaintiff annexed the contract of loan and the suretyships. There was no dispute that the contracts had all been concluded.

[3] The plaintiff obtained further security from the first defendant in the form of a mortgage bond which the first defendant passed over immovable property (a farm) which was purchased by the first defendant using the proceeds of the loan. The farm was acquired for a commercial purpose.

[4] The defendants claimed that as more than one cause of action had been completed in the particulars of claim and as the affidavit did not specifically refer to each individual claim pleaded that the courses of action were mutually destructive. This defence does not avail the defendants as the affidavit opposed to verify the courses of action.

[5] The defendants claim further that the National Credit Act 34 of 2005 (NCA) applied to the relationship between the parties. This claim is misguided as the first defendant is a juristic person which concluded a loan in excess of R5 million. In terms of section 9 (4) of the NCA a Credit Agreement is a large agreement if it is a mortgage agreement. The agreement of loan in question is a large agreement as it is a Mortgage Agreement i.e. the principal debt is secured by a mortgage bond. In terms of section 4 (1) of the NCA a large agreement concluded by a juristic person whose asset value is below the threshold value determined by the Minister is not a creditor agreement subject to the Act. A Credit Agreement in terms of which the consumer is a juristic person whose asset value exceeds the threshold value determined by the Minister is also not a Creditor Agreement subject to the provisions of the Act. Accordingly, whatever the value of the assets of the plaintiff, as the Credit Agreement is a large agreement, it is not subject to the provisions of the Act.

[6] Once, the provisions of the Act do not apply to the principal debt they do not apply to the deeds of suretyship.¹

[7] The defendants raised the question of indebtedness and reckless credit granting. These were introduced as concepts under part D of the NCA (section 78 – 88). Part of the NCA does not apply to a Credit Agreement in respect of which the consumer is a juristic person. The principal debtor is a juristic person hence by reason of the provisions of section 78 (1) of the NCA,

¹ See: Firststrand Bank Limited v Carl Beck Estates (PTY) Limited 2009 (3) SA 384 1PD

the Act does not apply to the contract between the plaintiff and first defendant. Hence the questions of recklessness and over indebtedness are irrelevant.

[8] The defendants stated that the amount claimed was incorrect. There is no evidence of the incorrectness. The plaintiff relies on a cause within the contract, which establishes the accuracy of the indebtedness *prima facie*. The defendants have set out no factual basis to question the certificate provided by the plaintiff. The defendants to upset the *prima facie* proof of evidence were required to present evidence.²

[9] The sixth defendant who was in control of the farming enterprise opposed to a confirmation affidavit but raised no facts relating to the question of the amount claimed being incorrect.

[10] It is accordingly my view that the court *are quo* correctly found that the defendants had not raised any defence of merit and that accordingly the plaintiff was entitled to judgment.

[11] In my view, the appeal should be dismissed.

[12] I make the following order:

12.1 The appeal is dismissed with costs

² See *Joob Joob Investments v Toks Mavundla Zek* 2009 (5) SA 1 (SCA) [29] to [33], *SA Taxi Securitization (PTY) Limited v Mbatha* 2011 (1) SA 310 (GS J), *Land and Agricultural Development Bank of Africa v Chidawaya & another* 2016 (2) SA 115 (GP) at [13]



C G LAMONT
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

I agree



PP _____
N. KOLLAPEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

I agree



PP _____
T.A.N. MAKHUBELE
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

COUNSEL FOR APPELLANTS:

Adv. X. Mofokeng

APPELLANTS ATTORNEY:

Ndobe Attorneys

COUNSEL FOR THE RESPONDENT:

Adv. M. Mostert

RESPONDENT'S ATTORNEY:

MacRobert Attorneys

DATE OF HEARING:

19 August 2020

DATE OF JUDGMENT:

19 August 2020

(Judgment delivered electronically in accordance of Covid 19
Regulations)