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

**Case number: 027429/2024**

**Date of hearing: 29 April 2024**

**Date delivered: 31 May 2024**

**(1) REPORTABLE: YES/NO**

**(2) OF INTEREST TO OTHERS JUDGES: YES/NO**

**(3) REVISED**

**DATE: 31/5/24**

**SIGNATURE:**

In the matter of:

**MANIE THEUNIS DU BRUYN**

**Applicant**

and

**SOUTH AFRICAN FRAUD PREVENTION SERVICE NPC**    **First Respondent**

**NEDBANK LTD**    **Second Respondent**

**JUDGMENT**

**SWANEPOEL J:**

[1] This application was brought urgently on 25 March 2024, but was referred to the normal opposed roll for determination. The first respondent is a non-profit company which is registered with the National Credit Regulator in terms of section 43 of the National Credit Act, 34 of 2005. It maintains a fraud data base, and it

partners with financial institutions with a view to providing information to the finance industry relating to fraud, financial crime and identity theft. The first respondent's partners post information relating to confirmed instances of fraud to the data base, which other financial institutions can then access when considering prospective clients.

[2] The second respondent is a commercial bank which placed an adverse report regarding the applicant on the first respondent's data base on 3 July 2017, under listing SH0211662. It did so pursuant to two home loan applications that the applicant submitted on 28 February 2017 and 13 May 2017 respectively, which the second respondent believed contained false information. The applicant alleges that he became aware of the listing six years later. The listing records the applicant's name and identity number, the fact that the listing had been placed by second respondent, and it said the following:

"The applicant submitted fraudulent salary advices in support of two homeloan applications.

(03) False employer details- (04) Forged or incorrect payslip."

[3] When the applicant became aware of the listing, he filed a dispute with the first respondent on 19 July 2023. The second respondent provided applicant with reasons for the listing. It stated that the applicant had submitted a home loan application on 28 February 2017 which he subsequently withdrew that had contained false information relating to the applicant's employment and his residential address. A second application was submitted on 13 May 2017 the veracity of which the second respondent equally challenged. The second respondent also alleged that the applicant had submitted fabricated supporting documents, including salary advices, in support of the home loan applications.

[4] On 17 August 2023 the dispute was dismissed on the grounds that the first respondent believed that credible evidence had been received which justified the listing.

[5] Subsequently, the applicant sought legal advice, and on 17 November 2023 the applicant's attorney wrote to both respondents. The attorney alleged that the listing was incorrect inasmuch as it stated that the applicant had provided false employment details and forged or incorrect pay slips, and she demanded the removal of the listing. The letter attempted to address the specific complaints of the second respondent, which were the following:

[5.1] That the applicant had stated on the applications that he resided at 3[...] O[...] Street, Waterkloof, and had been residing at that address for 10 years, and that his pay slips reflected that as his residential address;

[5.2] That there were discrepancies relating to the applicant's employment period with his then employer;

[5.3] The employment code on the salary advices differed from the employment code on the application form;

[5.4] The employer's contact details on the salary advice were that of the applicant;

[5.5] The company with which applicant was employed did not operate from the address provided on the applications.

[6] The applicant's attorney submitted a letter to the first respondent, written by the applicant's employer, one Ms Gomes, who attempted to explain the discrepancies relating to the period of employment, the discrepancy relating to the employer's address, as well as the reason why the employer's contact details were also those of the applicant. It also explained the reasons why the employer's business address was no longer in use. The details of the explanation are not relevant to this judgment.

[7] What is relevant to this judgment is that it is common cause that the applicant alleged in the applications that at the time of submitting the applications he resided at 3[...] O[...] Street Waterkloof and that he had been at that address for ten years.

That was not true, as the applicant had already left that address in 2012, and had not resided there in the four years before he submitted the applications. Relating to this discrepancy the applicant's attorney explained as follows:

"It is our instruction that our client resided at 3[...] O[...] Avenue, Waterkloof for several years, whereafter he vacated the property during 2012. Our client, out of habit and due to an innocent oversight, detailed this address when he commenced employment with NAS and as a result the same address was innocently detailed on the application forms."

[8] The respondents did not accept the applicant's explanation, and refused to remove the listing. The applicant then launched this application urgently, seeking the following relief:

[8.1] An order that the first respondent's retention of the listing on its database under no. SH00211662 is unlawful, invalid and incorrect;

[8.2] An order that the listing by the second respondent is unlawful, invalid and incorrect;

[8.3] An order that the listing be removed from the first respondent's database;

[8.4] Costs against the second respondent on the attorney/client scale, and in the event of opposition by first respondent, that the respondents shall pay the costs jointly and severally.

[9] The first respondent abides the decision of the court. The second respondent opposed the urgent application on the merits, but it also took the point that the application was not urgent. The urgent court obviously agreed with the second respondent, which resulted in the matter being postponed to the opposed roll.

[10] I have purposely not delved into the allegations regarding the applicant's term of employment, his employer's contact details, nor his employer's business address. Those discrepancies have been explained by the applicant's employer, and, although

the explanations are somewhat suspicious, I have no basis upon which to reject them.

[11] However, what is common cause between the parties is that the applicant provided a false residential address on both applications. The explanation given by the applicant, that he had made a bona fide error out of force of habit when he not only provided his old address to his employer during 2016, but also to second respondent in two separate home loan applications thereafter, is preposterous and is rejected. The applicant had not resided at that address for some four years. He surely knew where he was residing in 2016 and 2017.

[12] The first respondent's Code of Conduct refers to two types of fraud that may be listed on the data base; firstly, 'convicted fraud', in cases where the perpetrator has been convicted of fraud by a court, and, secondly, 'confirmed fraud' which is where an *"SAFPS Channel Partner client has fully investigated the incident and confirmed that a fraud was indeed perpetrated, with retention of all the evidence that will suffice to open a case of fraud at the SAPS if so desired by the Channel Partner Client."*

[13] The second respondent alleges that the listing was justified as the applicant had committed a 'confirmed fraud'. The applicant says that a mere misrepresentation does not amount to fraud. The applicant says that the second respondent must show that he had the intent to mislead the second respondent, and that the misrepresentation was made in bad faith.

[14] Fraud Is the unlawful and intentional making of a misrepresentation to another, which prejudices, or has the potential to prejudice, the other person.

[15] There is no question that the applicant misrepresented his address. I reject the contention that the representation was made out of 'habit'. Such an explanation is simply not tenable. There is no doubt that should a lender be provided with misleading information regarding an aspect as crucial as the residential address of the potential borrower, the lender is at least potentially at risk of prejudice. Such conduct is unlawful.

[16] A court cannot see into a perpetrator's mind. It is not often that a perpetrator expresses his intentions when he commits an offence, and thus the presence or absence of intent often has to be deducted from the circumstances. In this case it is hard to understand what innocent explanation there may be for the applicant's use of an address which he had left four years before. The explanation given by the applicant's attorney is a work of fiction, and its absurdity supports the view that there is really no innocent explanation. In these circumstances I find that the applicant intentionally tried to mislead the second respondent.

[17] Consequently, I find that the listing was correct inasmuch as it stated that the pay slips contained incorrect information, Consequently, the application must be dismissed.

[18] The costs of 25 March 2024 were reserved for determination by this Court. I see no reason why those costs should not follow the result.

**[19] In the circumstances the application must fail, and I make the following order:**

**[19.1] The application is dismissed with costs.**

**SWANEPOEL J  
JUDGE OF THE HIGH COURT  
GAUTENG DIVISION PRETORIA**

**COUNSEL FOR THE APPLICANT: Adv. F Joubert**

**ATTORNEY FOR THE APPLICANT: Carmia Greyvenstein  
Attorneys**

**COUNSEL FOR THE SECOND  
RESPONDENT: Adv N Ndlovu**

**ATTORNEY FOR SECOND  
RESPONDENT:**

**Cliffe Dekker Hofmeyer  
Inc**

**DATE HEARD:**

**29 April 2024**

**DATE OF JUDGMENT:**

**27 May 2024**