



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO: 12954/23

In the matter between

PREFERENCE CAPITAL (PTY) LTD

APPLICANT

AND

OONAGH VICTORIA HUNTER

RESPONDENT

Date of Hearing: 19 November 2024

Date of Judgment: 20 January 2025 (to be delivered via email to the respective counsel)

JUDGMENT

THULARE J

[1] The applicant sought summary judgment against the respondent in the amount of R765 000-00 by virtue of a guarantee concluded by the respondent in favour of the applicant in respect of monies lent and advanced to a private company, Rainbow Real Estate (Pty) Ltd (the company) of which the respondent was the sole director. The

respondent opposed the application on two grounds, the one being the alternative to the other. First, she admitted signing the loan agreement on behalf of the company but disputed the signature on the guarantee. In the alternative, should it be found that she signed the guarantee, she claimed that she should not be held to that agreement because she did not have the intention to do so, and signed it in error (*iustus error*).

[2] The respondent's defence was that the then director of the debtor, Guy de Wiew had approached her to assist him with the debtor to overcome the legal restraints placed upon it and him personally as a result of a restraint of trade. She naively trusted De Wiew and concluded a verbal agreement with him that she would be placed as an interim director of the debtor whilst De Wiew continued to run the debtor. She would sign any formal documents required to be signed on behalf of the debtor and she would not be required to bind herself to be liable for whatsoever reason for the liabilities of the debtor. In the event that she would incur any liability as a result of her being a director or as a result of her signing any document upon the request of De Wiew, he would indemnify her against such claims. During the end of March 2023 De Wiew informed her that he has on behalf of the debtor secured a loan from the applicant and she was requested to sign the loan agreement when she was contacted by the applicant. At no stage was she informed that she would be required to sign a guarantee binding her as surety and co-principal debtor in favour of the applicant. She was told she would be asked only to sign a loan agreement. Had she been told that she would be required to bind herself for the liabilities of the debtors, she would have refused to sign the documents to be presented by the applicant. The respondent joined and instituted a conditional third-party claim against De Wiew in the action against her by the applicant. Therein the respondent prayed for an order that in the event that the applicant's claim succeeded against her, that De Wiew indemnify her in such amount as she was ordered to pay, together with the costs of defending the action and an order that De Wiew pay the respondent's costs occasioned by the third-party proceedings.

[3] The representative of the applicant, Chanel McGeer, had at the time of the signing of the loan agreement advised the respondent that she was, as representative of the

debtor, signing a loan agreement and merely pointed out where the respondent had to append her signature in such capacity. The respondent was not given a reasonable opportunity to peruse the documents presented to her and had trusted the representation of Chanel McGeer that it was merely a loan agreement that was being signed. In the event that the court found that she signed the guarantee, which she denied, she pleaded that at the time of signing, she was merely acting in her capacity as representative of the debtor and was unaware that the documents included a guarantee. She did not notice, nor was she alerted that she was asked to sign a guarantee. She believed that she was merely signing the relevant pages of the loan agreement in her capacity as representative of the debtor. She had no intention to bind herself, by way of a guarantee or otherwise, for the debts of the debtor and in the circumstances the guarantee was signed in error.

[4] In argument, amongst others, the respondent drew the court's attention to the detail of the circumstances around the alleged signature of the guarantee, which according to her could not be determined on the papers. These included the certificates of signature filed by the applicant as part of the annexures to the summons. The loan agreement and the guarantee each had its own certificate. What could only be clarified through evidence by McGeer only, according to the respondent, was why the timestamp for both the signatures of the respondent was at the same time, to wit, 4 April 2023 at 03 minutes and 18 seconds past 10. The respondent suggests that this was humanly impossible as the loan agreement consisted of 11 pages and the guarantee consisted of 7 pages. Most importantly, although in its pleadings the documents were set apart to be distinct with a certificate of signature and a certificate of balance between them to make them separate, at the bottom of the page they appear to run as one document from page 1 of 18 to page 18 of 18. This, according to the argument, appears to support the respondent's case that only one document was submitted to her for signature, and she was made to believe that it was the loan agreement only. Further argument was that McGeer was not the deponent to the applicant's case and the applicant's case required answers, and that could only be done if the claim was referred for evidence.

[5] It is not for this court to determine the dispute of facts on the merits of the principal case. This court is only concerned with an assessment of whether the pleaded defence was genuinely advanced.¹ The guarantee was allegedly signed digitally. Having regard to the issue around the timestamp, it seems to me that it is amongst others MsGeer who can shed light on the manner in which the guarantee was presented and allegedly signed, as well as expert evidence, to prove that the respondent signed the guarantee. As things stand now in the light of the denial, the certificate of signature remains extrinsic hearsay evidence. The respondent will be denied the procedural right to pursue her third-party claim against De Wiew if summary judgment is granted. This will close the door for her in this action to join De Wiew and pursue her prayer for indemnity. If it is found that the respondent signed the guarantee, the question whether she did so because of misrepresentations by either or both De Wiew and McGeer can only be answered having considered the evidence, and not from the papers before me. The question whether McGeer made an innocent or fraudulent misrepresentation to the respondent that she was signing only the loan agreement and not both the loan agreement and the guarantee and conducted the signing in such a manner that caused the respondent to be unaware of the guarantee before signature, can be determined having regard to the evidence of McGeer, amongst others. Or put simply otherwise, did either or both De Wiew and McGeer induce the guarantee? I am unable to determine this question on the papers only. I am persuaded that the respondent raised a *bona fide* defence.

[6] For these reasons I make the following order:

- (a) Summary judgment is refused.
- (b) the respondent is granted leave to defend the action.
- (c) costs in the cause.

¹ *Tumileng Trading CC v National Security and Fire (Pty) Ltd* 2020 (6) SA 624 (WCC) para 23 and 24.

DM THULARE
JUDGE OF THE HIGH COURT