

IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, GQEBERHA

Case No.: 676/2017

Date Heard: 26 May 2023

Date Delivered: 30 May

2023

In the matter between:

CRAIG ANTONIO LAZARUS
Applicant/Defendant

First

ROSEMARY VIRGINIA LAZARUS
Applicant/Defendant

Second

And

ABSA BANK LIMITED
Respondent/Plaintiff

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

RONAASEN AJ:

Introduction

[1] On 13 December 2022 I gave judgment in favour of the plaintiff against the defendants, jointly and severally, the one paying the other to be absolved, for:

- 1.1. payment of the sum of R168 700.96;
- 1.2. payment of interest on this sum at the rate of 7.45% per annum, calculated daily on the outstanding balance and capitalised mostly in arrears from 12 May 2022 to date of payment, both days included; and
- 1.3. costs, on the scale as between attorney and own client, that being the scale on which the parties had agreed.

[2] The defendants have applied for leave to appeal against what they describe as my "*unfair and prejudice [sic] judgment*". The notice of application for leave to appeal is a poorly drafted document and is rather in the form of an affidavit. As the defendants are unrepresented, I shall assume in their favour that they seek leave to appeal against the order I made on 13 December 2022.

[3] This judgment, which is directed at the application for leave to appeal, must be read in conjunction with my judgment handed down on 13 December 2022.

The grounds on which the defendants seek leave to appeal

[4] As stated, the defendants' notice seeking leave to appeal does not cogently set out the grounds on which they seek such leave. Essentially the document is a repeat of the "defence" equally poorly set out in their amended plea.

[5] In the notice of application for leave to appeal it is contended that I erred in finding that the defendants had contracted with the plaintiff. At the trial this was the mainstay of their defence that they were not indebted to the plaintiff.

Discussion

[6] The only evidence adduced at the trial by the defendants was that of the second defendant, who was adamant that there indebtedness was not to the plaintiff but rather to an entity known as Milnex. She, however, readily conceded in cross-examination that she and the first defendant had:

6.1. signed the mortgage loan agreement on which the plaintiff relied at the trial and that this document, in large bold letters, identified the plaintiff as the entity advancing them a loan; and

6.2. executed a debit order on their bank account, in favour of the plaintiff and that all the payments they made in reduction of

the loan amount they had received, had been made to the plaintiff over a period of eight years; and

6.3. received regular statements from the plaintiff, which they did not query.

[7] The defendants did not challenge the amount being claimed from them by the plaintiff, but only disputed that the plaintiff was their creditor. The disingenuity of this “defence” was confirmed by the objective documentary evidence, particularly the loan agreement referred to above, which in clear and unambiguous terms identified the plaintiff as their creditor, as did the regular statements they received. Furthermore, one could ask for no clearer indication that the plaintiff was their creditor than their conduct in executing a debit order in favour of the plaintiff and paying the plaintiff for eight years in reduction of the loan amount.

[8] It is difficult to discern how another court would view this objective and unchallenged evidence differently.

Conclusion

[9] In terms of section 17(1) of the Superior Courts Act, 10 of 2013 I may only give leave to appeal in circumstances where the appeal would have a reasonable prospect of success or there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

[10] In view of the clear and unchallenged objective evidence which confirms the indebtedness of the defendants to the plaintiff an appeal would not have a reasonable prospect of success. There is no other compelling reason why the appeal should be heard.

Order

[11] Thus, the application for leave to appeal is dismissed with costs, such costs to be taxed or agreed on the scale as between attorney and own client, that being the scale agreed by the parties.

**O H RONAASEN
ACTING JUDGE OF THE HIGH COURT**

The parties were represented as follows:

First Applicant/Defendant: in person	Mr CA Lazarus
Second Applicant/Defendant: person	Mrs RV Lazarus in
For Respondent: Instructed by: Inc.	Adv P Marais McWilliams & Elliot

