

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

- (1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED:

Date: **16th August 2022** Signature:

CASE NO: 11826/2015

DATE: 16TH AUGUST 2022

In the matter between:

EDS PROJECTS (PTY) LIMITED

Applicant

and

MAKIBELO, MABEL

Respondent

Coram: Adams J

Heard: 15 August 2022

Delivered: 16 August 2022

Summary: Application for monetary judgement – based on written acknowledgment of debt – respondent's defences bad in law – her version and grounds of opposition rejected as far-fetched – application granted.

ORDER

Judgment is granted in favour of the applicant against the respondent for: -

- (1) Payment of the sum of R589 000;

- (2) Payment of interest on R589 000 at the legal rate of interest of 9% per annum from the 1 February 2014 to date of final payment; and
 - (3) Costs of suit on the scale as between attorney and client.
-

JUDGMENT

Adams J:

[1]. On 12 December 2013 the respondent signed a written acknowledgment of debt in favour of the applicant in terms of which she acknowledged herself to be truly and lawfully indebted to the applicant in the amount of R589 000 in respect of 'cash lent and advanced'. The respondent undertook to pay the amount of her admitted indebtedness in instalments of R12 000 per month, commencing on 31 January 2014, with the subsequent payments being payable on or before the 31st of each and every subsequent month. The respondent failed to effect payment of even one of the instalments on the due dates.

[2]. In this opposed application the applicant claims from the respondent payment of the amount of her admitted indebtedness, being the amount of R589 000, together with interest and costs. The respondent admits having signed the acknowledgment of debt at the office of the applicant's attorneys on 12 December 2013. However, she denies liability for payment of the amount claimed and she opposes the application essentially on two grounds.

[3]. Firstly, the respondent avers that the party who in fact owes the money to the applicant is an entity by the name of African-Nest Executive Lodge CC, of which she is the sole member. The monies were lent and advanced, so the respondent avers in her answering affidavit, to the CC for purposes of effecting certain alterations and renovations to its property. As to why she signed the acknowledgment in her personal capacity, the respondent proffers a convoluted explanation to the effect that she was under pressure to sign the agreement and that she did not have legal representation at the time.

[4]. As submitted by Ms Swartz, who appeared on behalf of the applicant, there appears to be no merit in this defence raised by the respondent. The acknowledgment of debt is clear – the respondent is the debtor, who is liable to the applicant for repayment of the amount lent and advanced.

[5]. The second ground of opposition to the application for judgment raised by the respondent is that she concluded the acknowledgment of debt under duress and/or under undue influence. The respondent does not even begin to present any evidence in support of this claim of duress let alone any credible evidence. She has also not set out any detail of the exact nature and extent of such duress and/or undue influence. The sum total of the allegations in support of duress was an averment to the effect that respondent signed the acknowledgment of debt because she wanted to ‘stop the heckling’ presumably from the side of applicant.

[6]. The respondent also alleges – rather half-heartedly – that she should not be bound by the written acknowledgment of debt as she did not read it and the contents were not explained to her. There is no merit in this latter ground of opposition as it is bad in law. As was said by Spilg J in *Blue Chip Consultants (Pty) Ltd v Shamrock*¹: -

‘Secondly, I do not understand our case law to hold that a person will escape the consequences of his signature if it can be shown that he had not read the document in question. That would be a startling proposition. One is expected to read what one signs.’

[7]. I therefore find myself in agreement with the submissions made by Ms Swartz on behalf the applicant that the defences raised by the respondent in opposition to the application are bad in law.

[8]. In any event, insofar as there may be factual disputes between the parties relating whether or not the respondent did in fact acknowledge her indebtedness to the applicant, such factual disputes can and should be decided in favour of the applicant on the basis of the principles enunciated in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Limited*². If regard is had to the

¹ *Blue Chip Consultants (Pty) Ltd v Shamrock* 2002 (3) SA 231 (W) at 239E.

² *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Limited* 1984 (3) SA 623 (A).

fact that the respondent accepts that she signed the written acknowledgment of debt, it has to be said that the version of the respondent is untenable – it can and should be rejected on the papers as far-fetched. The question is simply this: why is the version of the respondent so scant on the details, when her explanations cry out for more particulars.

[9]. The general rule is that a court will only accept those facts alleged by the applicant which accord with the respondent's version of events. The exceptions to this general rule are that the court may accept the applicant's version of the facts where the respondent's denial of the applicant's factual allegations does not raise a real, genuine, or *bona fide* dispute of fact. Secondly, the court will base its order on the facts alleged by the applicant when the respondent's version is so far-fetched or untenable as to be rejected on the papers.

[10]. It is necessary to adopt a robust, common-sense approach to a dispute on motion. If not, the effective functioning of the Court can be hamstrung and circumvented by the most simple and blatant stratagem. A Court should not hesitate to decide an issue of fact on affidavit merely because it may be difficult to do so. Justice can be defeated or seriously impeded and delayed by an over – fastidious approach to a dispute raised in affidavits.

[11]. Applying these principles, I reject the version of the respondent and accept that of the applicant.

[12]. Accordingly, the relief sought by the applicant should be granted.

Costs

[13]. The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See: *Myers v Abramson*³.

[14]. I can think of no reason why I should deviate from this general rule.

[15]. Furthermore, the acknowledgment of debt provides for payment by the respondent of attorney and client costs in the event of the applicant having to

³ *Myers v Abramson*, 1951(3) SA 438 (C) at 455.

institute legal proceedings in order to recover payment from the respondent in terms of the said instrument.

[16]. I therefore intend awarding costs against the respondent in favour of the applicant on the scale as between attorney and client.

Order

[17]. Accordingly, Judgment is granted in favour of the applicant against the respondent for: -

- (1) Payment of the sum of R589 000;
- (2) Payment of interest on R589 000 at the legal rate of interest of 9% per annum from the 1 February 2014 to date of final payment; and
- (3) Costs of suit on the scale as between attorney and client.

L R ADAMS

*Judge of the High Court of South Africa
Gauteng Division, Johannesburg*

HEARD ON:	15 th August 2022
JUDGMENT DATE:	16 th August 2022
FOR THE APPLICANT:	Advocate Sarajulie Swartz
INSTRUCTED BY:	Stan Fanaroff & Associates, Rosebank, Johannesburg
FOR THE RESPONDENT:	In person
INSTRUCTED BY:	In person