

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 032661/2023

(1)	<u>REPORTABLE: YES / NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES:</u> <u>YES/NO</u>
(3)	<u>REVISED.</u>
.....
DATE	

In the matter between:

BODYSHOP EQUIPMENT SOLUTIONS (PTY)

Applicant

and

PRIDE AUTOBODY WORX (PTY) LTD

1st Respondent

NAGEL MARK PIETER

2nd Respondent

JUDGMENT

MAKUME J:

[1] The Applicant is a registered Credit Provider and a financier of equipment used by Panel beaters in the motor industry.

[2] During or about the 19th May 2019 the first Respondent opened a credit account with a company known as Top Coat for the supply of automotive refinishing products.

[3] The credit account had terms of payment which were breached by the first Respondent. At the time of breach the first Respondent was indebted to Top Coat in the following amounts:

3.1	R701 689.45	
3.2	R 7 325.50	
3.3	<u>R178 036.21</u>	
	<u>R887 051.16</u>	Total

[4] On or about the 15 March 2023 Top Coat ceded their claim against the first Respondent to the Applicant.

-

[5] During or about February 2021 a company WRPB (West Rand Panel beaters) concluded an investment marketing agreement with the Applicant which resulted in the Applicant advancing to WRPB an amount of R756 476.96.

[6] The second Respondent bound himself a Surety and Co-principal debtor for the debts of WRPB as a result when the marketing investment agreement was cancelled the second Respondent in his capacity as surety became liable to pay to the Applicant amounts due by the first Respondent to Applicant.

- [7] WRPB is an associate company of the first Respondent and both companies were controlled by the second Respondent hence the amount of R756 476.96 was advanced on the basis that it would be repaid by the first Respondent through the first Respondent's purchases from Top Coat and/or Allied Paint over a period of five years. It was a term of the agreement that the first Respondent's indebtedness to the Applicant would be reduced on a monthly basis in terms of an agreed amortisation rate outlined in the agreement.
- [8] The first Respondent failed to comply with the payment terms as agreed as a result during March 2023, Top Coat issued to the first Respondent a certificate of Balance indicating amounts due by the first Respondent to the Applicant as on the 31st August 2022. It is the amount set out in prayer 1 of the Notice of Motion. On the 30th March 2023 Top Coat ceded its claim against the first Respondent to the Applicant.
- [9] In the meantime as early as August 2022 the first Respondent decided to unilaterally cancel the marketing investment agreement which repudiation was accepted by the Applicant in a letter addressed to the Respondent dated the 23rd August 2022 attached to the Founding Affidavit marked "FA7. The indebtedness of First Respondent to the Applicant was at that time the amount of R584 438.95.

- [10] It is common cause that neither the first nor the second Respondent disputed this amount in fact during November 2022 a meeting was arranged at which second Respondent on behalf of the first Respondent and himself made proposal to make monthly payment in reduction of the capital amount of R584 438.95.
- [11] During December 2022 and in keeping with their undertaking the second Respondent made payment to the Applicant of the amount of R500 000.00 (Five Hundred Thousand) leaving a balance of R84 438.95 which is the amount now being claimed in prayer two of the Notice of Motion.
- [12] The issues raised as a defence by the Respondents are verbatim similar to the issues raised in case number 2023/032786. Mr Nagel the second Respondent in this matter is also the second Respondent in matter 2023/032786. He signed surety for both Respondents in the two matters.
- [13] The Affidavit deposed to by Mr Mohamed William on behalf of the first Respondent in my view amounts to hearsay evidence and to accept its contents would amount to a travesty of justice. Mr Mohamed was not party to any of the agreements concluded neither was he present at the meeting held in November 2022 and yet he has the audacity to tell the Court that there are dispute of facts in this matter which should be subjected to oral evidence.

- [14] What is worse to prove that he has no knowledge about what he purports to be the truth in paragraph 8 of his affidavit in which he relates about the settlement meeting he concludes with the words “After agreeing to the terms, the Applicant failed to revert to us on when we can conclude an Acknowledgement of Debt.”
- [15] Mr Mohammed says these words as if he was part of the meeting when he was not. Also he does not say what the “agreed” terms were of the settlement. I have come to the conclusion that his affidavit in so far as it purports to be a basis for the defence of first Respondent should be rejected as hearsay. On the day of the hearing first Respondent was not represented at Court in the result no submissions were made on its behalf. In the result judgement for payment of the amount set out in prayer 1 of the Notice of Motion should be granted.
- [16] The second Respondent was represented by Counsel on the date of hearing and basically raised the same defence as was alluded to in number 032786/2023.
- [17] In his address to this Court Counsel for the second Respondent sought to spring in a new defence which had never been pleaded namely that the marketing investment agreement was never cancelled. He also surprisingly now questioned why the associated companies namely

Top Coat and APS were not part of litigation and when asked why the Respondent did not join the parties he could not answer that.

[18] The arguments in respect of the NCA were abandoned leaving only the issue of dispute of fact and the validity of the Suretyship Agreement.

[19] I reiterate what I have found and concluded in the matter under case number 032786/2023 and beg leave that such finding be incorporated herein. In short I found that there was no dispute of fact let alone a genuine one. Mr Nagel signed the deed of suretyship well knowing what he was signing and is bound by that. He made payment of an amount of R500 000.00 in reduction of his indebtedness to the Applicant and he is liable for the balance.

[20] In the result I make the following order:

20.1 The first Respondent is directed to pay the Applicant the following amounts:

- a) R701 689.45
- b) R 7 325.50
- c) R178 936.21
- d) Interest on the aforesaid amounts at the prescribed rate of interest from 15th March 2023 to date of payment
- e) Costs on Attorney and Client.

20.2 The first and second Respondents are ordered and directed jointly and severally the one paying the other to be absolved to pay the Applicant as follows:

- a) The sum of R84 438.95.
- b) Interest on the said amount at the rate of 12,75% per annum from 15 March 2023 to date of payment.
- c) Costs of suit on a party and party scale.

DATED at JOHANNESBURG this the 04th day of March 2024.

**M A MAKUME
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG**

APPEARANCES

DATE OF HEARING	:	26 February 2024
DATE OF JUDGMENT	:	04 March 2024
FOR APPLICANT	:	ADVJG BOTHA
INSTRUCTED BY	:	MESSRS COETZEE DUVENAGE
FOR 1 ST RESPONDENT	:	NO APPEARANCE
INSTRUCTED BY	:	
FOR 2 ND RESPONDENT	:	ADV L MULAUDZI
INSTRUCTED BY	:	MESSRS NOURSE INCORPORATED

