

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG HIGH COURT, PRETORIA)

Case No: 35667/2017

23/2/2018

In the matter between:

INVESTEC BANK LIMITED t/a INVESTEC PRIVATE BANK PLAINTIFF

and

GERHARDUS LOURENS FERREIRA DEFENDANT

JUDGMENT

NGOBENI, AJ:

[1] The Plaintiff is Investec Bank Limited t/a Investec Private Bank, a private bank, registered as such, with registration No. 1969/004763/06 a company registered in terms of the company laws of the Republic of South Africa in the duly registered as a commercial bank by virtue of the provisions of the Bank Act 94 of 1990 (as amended) as well as a registered credit provider in terms of Section 40 of the National Credit Act 34 of 2005 with chosen domicilium citandi et executandi at the corner of Atterbury & Klarinet streets, Menlo Park, Pretoria.

- [2] The defendant is Gerhardus Lourens Ferreira, an adult male with [...], Pretoria, Gauteng province.
- [3] The Plaintiff in this matter brought a summary judgment application in terms of section 32 of the Uniform Rules of the High Court pursuant to an action he instituted against both the Defendant in the amount of R1 091 350, 19 together with interest calculated at the rate of 9.5% calculated from the 29th of March 2017 and costs.
- [4] The plaintiff's claim emanates from a contract attached to the particulars of claim marked annexure " A" whereby the plaintiff alleges to have issued, and delivered a credit card to the defendant which he signed for at 13H30 the 30th of March 2016. In terms of the contract the credit card entitled the defendant to effect transactions within the credit limit an extra account credit limit and within an applicable spending limit.
- [5] In view of the allegations made by the plaintiff per the particulars of claim which are not denied, as well as averments made by the defendant in its opposing affidavit and the submissions by the counsels during argument of the matter, the following appears to be common cause:
- 5.1 The defendant accepted delivery of the credit card and accordingly used the said credit card to the amount of R1 091 350, 19 by 29 March 2017 .
- 5.2 The plaintiff consequently cancelled the credit facility.

- [6] Save to accept delivery and the use of the credit card to the said amount mentioned above the defendant denied the existence of any agreement between himself and the plaintiff. The defendant has tendered what is commonly called a bare denial.
- [7] Rule 32 (3) "Upon the hearing of an application for summary judgment the defendant may - (b) Satisfy the court by affidavit (which shall be delivered before noon on the court day but one preceding the day on which application is to be heard) or with the leave of the court by oral evidence of himself or of any other who can swear positively to the fact that he has a bona fide defence to the action; such affidavit or evidence shall disclose fully the nature and grounds of the defence and the material facts relied upon therefor."
- [8] 'Satisfy' as mentioned in rule 32 (3)(b) does not mean prove. What the rule requires is that the defendant set out in his affidavit facts which, if proved at the trial, will constitute an answer to the plaintiff's claim. When the defendant advances his contentions in resistance to the plaintiff's claim he must do so with a sufficient degree of clarity to enable the court to ascertain whether he has deposed to a defence which, if proved at the trial, would constitute a good defence to the action (*Breitenbach v Fiat SA* (Edms) Bpk 1976 (2) SA 226 (T)). It is not sufficient for a defendant to state

that he has no knowledge of the allegations in the plaintiff's summons (Hendricks v Saacks 1945 CPD 270).

[9] On perusing the opposing affidavit as well as listening to arguments by the defence counsel during the application I battled to understand what the defence is that the defendant was providing. The defendant could not explain how he accepted delivery of the credit card and continued to use it to the extent that he did which is in line with the credit limit provided by the plaintiff in terms of the disputed agreement, without any contract whatsoever existing between himself and the plaintiff. Interestingly the following has been stated on the document entitled Investec deliver form dated the 30th of March 2016 on which the defendant acknowledged receipt of the credit card: " ... I hereby accept delivery of my card and or quotation. I agree that I will be bound by the Investec Private Bank Terms and Conditions and accept the terms of the Pre - Agreement Quotation that I have been given... I acknowledge that the Investec Private Bank Terms and Conditions are available on printable webpage and that I can access the Investec Private Bank Account Terms and Conditions on hyperlink...".

[10] The defendant further alleges that the plaintiff's claim is not a liquidated one. He however, failed to give an explanation in what respect is the claim not liquidated.

[11] The doors of the Court should be closed to a defendant only if there is no doubt that the plaintiff has an unanswerable case. It is clear from his affidavit that the defendant advanced a defence simply to delay the obtaining of a judgment to which he well knows that the plaintiff is justly entitled.

[12] I accordingly make the following order:

1. Summary judgment is granted against the defendant for payment of the amount of R1 091 350, 19 with interest calculated at the rate of 9.50% calculated from 29 March 2017;
2. The Defendant is to pay costs of this application on an attorney and client scale.

NGOBENI AJ

ACTING JUDGE OF THE HIGH COURT