IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case number: 36951/2020

Date of hearing: 12 February 2024

Date delivered: 21 February 2024

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO
(3) REVISED

21/2/24 .....
DATE SIGNATURE

In the application between:

SB GUARANTEE COMPANY (RF) (PTY) LTD **Plaintiff**

and

PHATHUTSHEDZO TSHAVHUNGWE **Defendant**

JUDGMENT

SWANEPOEL J:

[1] This is an application for summary judgment in which the plaintiff claims payment of R 1 926 523.69, interest on the aforesaid amount, and an order declaring the immovable property situated at Erf [redacted] Ext. 9 Township ("the property") specially executable. The plaintiff also seeks an order setting a reserve price, and costs on the attorney/client scale.

[2] The plaintiff's case is based on a loan agreement between the parties dated 4 August 2017, and a mortgage bond which was registered over the property as security in favour of the plaintiff. The defendant first fell into arrears in June 2018. The plaintiff has placed 39 phone calls to the defendant in an attempt to assist the defendant to regularize the loan. Eventually, when the plaintiff issued summons against the defendant on 7 August 2020, the defendant was 7.6 months in arrears, amounting to R 153 479.38. The defendant delivered a notice of intention to defend, which spurred the plaintiff into launching this application on 2 June 2022. At that stage the account was in arrears in the sum of R 524 267.93. The defendant also owed the local authorities R 110 916.32 in respect of services and rates.

[3] None of the above is in dispute. The defendant raised two defences. Firstly, the defendant said that the loan had been granted recklessly, as envisaged by section 80 of the National Credit Act, 34 of 2005 ("the Act"). Secondly, the defendant disputed the certificate of balance provided by the plaintiff. He alleged that he had made further payments which were not reflected on the bank statement. That seems correct, but the statement was accurate up to 2 June 2022, when this application was brought. Even on the defendant's calculation he is in arrears in excess of R 294 000.00.

[4] Ultimately, in argument, the defendant raised only two arguments. The first was that of reckless lending, and the second was an attack on the reserve price proposed by the plaintiff.

[5] The defendant is an advocate who practices as a member of the Pretoria Society of Advocates. He says that he applied for a loan in the amount of R 1 800 000, being the full purchase price of the home. Initially the plaintiff approved a loan of R 1 445 985, but upon reconsideration, the entire amount was approved. The defendant submitted an income statement prepared by his accountant in support of the application, as well as a schedule of outstanding invoices. The defendant says that the loan was a risk to the plaintiff.

[6] The defendant says, furthermore, that he is on occasion briefed by unscrupulous attorneys who do not pay his fees timeously. However, having perused his debt book in 2018, the defendant was confident at the time that he could afford to purchase the property. He undertook pupillage in 2018, commencing his practice at the Bar in November 2018 (it's uncertain where he practiced before that date in order to build up a debt book). In 2020 the defendant was further deprived of work when Road Accident Fund work dried up. This was followed by the Covid-19 pandemic which further affected his business.

[7] Section 80 of the Act provides that a credit agreement is reckless if:

> [7.1] the credit provider does not conduct an assessment in accordance with section 81 (2) of the Act, to determine whether the consumer understands and appreciates the risks and costs of the credit, and to consider the consumer's debt re-payment history and his existing financial means and prospects.
>
> [7.2] an assessment has been conducted, an agreement is entered into despite the preponderance of information at the credit provider's disposal indicates that the consumer does not understand the risks, costs or obligations under the agreement, or the loan would make the consumer over-indebted.

[8] The defendant did not allege that the plaintiff had not conducted an assessment. He also did not allege that he failed to understand the

risks, costs and obligations attendant on the agreement. The defendant himself considered his financial situation at the time, and he was satisfied that he could afford to service the loan. Evidently, having seen the defendant's fees book and list of outstanding invoices, the plaintiff was of the same view. Neither the plaintiff nor the defendant could have foreseen the unfortunate events that followed. The plaintiff could not have predicted that the defendant's attorneys would not pay him, nor that the RAF would deprive the defendant of a major portion of his income. Nobody could have predicted the Covid-19 pandemic. In my view, therefore, the defendant has not raised a defence which suggests a triable issue. These were unfortunate events that occurred after the loan was granted.

[9] As far as the reserve price is concerned, the defendant relied on allegations that can be described as anecdotal at best. The defendant has described other properties in the area which have been sold for amounts higher than the estimate given by the plaintiff's valuator. That may be so, but this Court cannot make a determination based on speculation. The plaintiff has provided the evidence of an expert which is not gainsaid. The defendant would have been better advised to obtain the services of his own expert. The issue relating to the setting of a reserve price is also not one that is triable.

[10] The immovable property is the primary residence of the defendant and his family. At the time when the matter was argued the forced sale value of the property was estimated at R 1 800 000.00, and the defendant owed R 34 942.24 in respect of rates and services. The balance on the home loan was R 2 144 712.68 and the arrears were R 537 915.14. I therefore agree with the plaintiff's counsel that a reserve price of R 1 765 057.80 (the forced sale value less the amount due to the local authority) is appropriate.

[11] Consequently, I grant summary judgment for:

[11.1] Payment of the amount of R1 926 523.69;

[11.2] Interest on the aforesaid amount at 9.75% per annum from 9 July 2020 to date of payment, both dates inclusive;

[11.3] That the immovable property described as:

ERF [redacted] EXTENSION 9 TOWNSHIP

REGISTRATION DIVISION J.R. PROVINCE OF GAUTENG

MEASURING 1250 (ONE THOUSAND TWO HUNDRED AND FIFTY)

SQUARE METERS

HELD BY DEED OF TRANSFER NUMBER T69242/2017

SUBJECT TO SUCH CONDITIONS AS SET OUT IN THE AFORESAID TITLED DEED

("the Property")

be declared executable for the aforesaid amounts;

[11.4] The Registrar is authorised to issue a Writ of Execution in terms of Rule 46 as read with Rule 46A for the attachment of the Property;

[11.5] That a reserve price be set at R1 765 057.80;

[11.6] Costs of suit on the attorney and client scale.

SWANEPOEL J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA

COUNSEL FOR PLAINTIFF:	**Adv. Phambuka**
ATTORNEY FOR PLAINTIFF:	**Vezi De Beer**
COUNSEL FOR DEFENDANT:	**In person**
ATTORNEY FOR DEFENDANT:	**Motsepe Attorneys**
DATE HEARD:	**12 February 2024**
DATE OF JUDGMENT:	**21 February 2024**