



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

Case no: AR139/2022

In the matter between:

BRANLEY INTERIORS CC

FIRST APPELLANT

BRIAN PHILLIP STAPLES

SECOND APPELLANT

and

ADPROPS SA (PTY) LTD)

RESPONDENT

ORDER

On appeal from: Pinetown Magistrates' Court (sitting as court of first instance):

The appeal is dismissed with costs on an attorney and client scale.

JUDGMENT

Smart AJ (Steyn J concurring):

[1] This is an appeal against the judgment of the Pinetown Magistrates' Court. The respondent (plaintiff) instituted action against the appellants (the first and second

defendants), in the Pinetown Magistrates' Court for payment of an amount of R158 566.31, alternatively R123 556.31, together with mora interest thereon and costs on the scale as between attorney and client.

The plaintiff alleged that the first defendant was indebted to it in that amount for arrear rental. It was further alleged by the plaintiff that the second defendant had bound himself as surety and co-principal debtor with the first defendant for amounts owing by the first defendant to the plaintiff. In support of its claim, the plaintiff relied on an agreement of lease which was attached to the particulars of claim.

[2] In a plea filed on behalf of the defendants, the first defendant took issue with the amount claimed and the second defendant denied that he signed a deed of suretyship. The plaintiff brought an application for summary judgment which was opposed by the defendants on the basis that the second defendant denied signing a surety agreement and that the lease agreement was signed only by the first defendant as lessee. The court a quo rejected the contention of the defendants and granted judgment against the defendants in favour of the plaintiff in the sum of R123 556.31 plus interest and costs on the attorney and client scale.

[3] Although the appeal is noted on behalf of both the defendants, it is apparent that judgment against only the second defendant is sought to be appealed against. The defendants sought condonation for the late delivery of the notice of appeal and for any delay in the prosecution of the appeal. This application was not opposed by the plaintiff and, to the extent that it was necessary, condonation was granted by this court.

[4] The issue on appeal is whether the second defendant, by signing the lease agreement on behalf of the first defendant, as tenant, bound himself as surety.

The lease agreement

[5] The plaintiff relies upon an agreement of lease concluded on 19 February 2020. According to the schedule of that agreement, and in accordance with clause 2, the tenant is described as follows:

'Company name: Adprops SA (Pty) Ltd

Represented by: Brian Phillip Staples.'

[6] Clause 14 of the schedule attached to the agreement reflects that "BP Staples is the guarantor/s for the tenant". Clause 19 of the agreement, headed "Guarantee", provides for the guarantor to bind himself in favour of the landlord as surety and co-principal debtor jointly and severally with the tenant. As it appears on the last page of the agreement, the second defendant signed in the space provided and described as 'Tenant'. The agreement is signed on each page by the second defendant.

[7] As is apparent from clause 16 of the agreement, which provides for the payment of rental, the second sentence of that paragraph was deleted and replaced with the words 'to be paid by EFT on the 1st of each month'. Both the deletion and the replaced words were in manuscript and signed by the plaintiff and the second defendant.

[8] The second defendant, in the plea filed on behalf of the defendants, contends that the lease agreement was signed by him as the representative of the first defendant and not as surety. This contention is repeated in the affidavit deposed to on behalf of the defendants in opposition to the application for summary judgment.

[9] I did not understand the second defendant's opposition to be based on *justus error*, i.e. that he was not aware that a suretyship clause was contained in the document. Indeed, in argument, it was contended on behalf of the defendants that s 6 of the General Law Amendment Act ("GLAA")¹ has not been complied with and that guarantor ought to have been required to sign on a separate portion. Counsel for the first defendant did not refer us to any case law in support of this contention. Section 6 of the GLAA provides that:

'No contract of suretyship entered into after the commencement of this Act, shall be valid, unless the terms thereof are embodied in a written document signed by or on behalf of the surety...'

[10] It is common cause that, in terms of the lease agreement, the tenant (the first defendant) was represented by the second defendant and the guarantor for the

¹ General Law Amendment Act 50 of 1956.

tenant was the second defendant. This is evident from clauses 2 and 14, respectively. It is furthermore common cause that the second defendant signed the agreement.

[11] In terms of clause 19, the guarantor bound himself as surety in favour of the landlord jointly and severally with the tenant and acknowledged that ‘a separate, distinct and independent contract of guarantee’ was brought into existence by his signature. Clause 19.4 provides that each guarantor who signs the document acknowledges that there is a distinct and independent contract of guarantee brought into existence by each guarantor who signs it.

[12] Having regard to the aforesaid provisions of the agreement the first defendant’s contention that the provisions of s 6 of the GLAA have not been complied with is accordingly rejected.

[13] In addition it is contended by the second defendant that he signed the agreement as representative of the first defendant and not in his personal capacity as surety.

[14] In accordance with the principles of *Steenkamp v Webster*² a person signing a document in a representative capacity may nevertheless in the same document expressly undertake some form of personal liability.

[15] For these reasons I am of the view that the magistrate came to the correct conclusion and the appeal should accordingly be dismissed.

Costs

[16] There is no reason to deviate from the normal principal that costs follow the result. It follows that, as the second defendant has been unsuccessful, he has to be held liable for the costs. The agreement provides for costs to be on the attorney and client scale.

² *Steenkamp v Webster* 1955 (1) SA 524 (A).

Order

[17] In all the circumstances, the following order shall issue:

The appeal is dismissed with costs on an attorney and client scale.

Smart AJ

Steyn J

Case Information

Date of Hearing : Friday, 19 May 2023

Date of Judgment : Friday, 02 June 2023

Appearances

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