

IN THE HIGH COURT OF SWAZILAND

a: Bsociety

1

SWAZILAND BUILDING SOCIETY

vs

KALANGA (PTY) LTD

Case No. 1496/97

Coram S. W. Sapire

For Plaintiff Mr. Flynn

For Defendant Mr. B. Simelane

Judgment

(16/12/97)

The plaintiff has applied for summary judgment. The summons commencing action is a claim for monies lent and advanced in terms of three mortgage bonds. The total amount which is said to be owing is E194 527.85 The amount the plaintiff claims, together with interest calculated at the rate of 19.5% per annum is calculated from the date of the summons to date of payment. The plaintiff further seeks an order declaring the property mortgaged in terms of the bonds numbered 39/1989, 22/1990 and 151/1990 to be executable.

In addition the plaintiff seeks costs on the scale as between attorney and client.

In support of the application for summary judgment an affidavit has been filed which was attested to by Nigel Caplen, the managing Director of the plaintiff The affidavit is in the usual form and appears to comply with the provisions of the rule relating to summary judgement.

The application is opposed by the defendant which has caused an affidavit to be filed. This affidavit is attested to by one Michael Temple, on 26 January 1998

In the first instance Temple, denies that the defendant has no bona fide defence to the Plaintiff's claim and that the notice of intention to defend was not given solely for the

a: Bsociety

2

purpose of delay. This of course is a conclusion of law, which examined in the light of the facts advanced in support thereof, turns out to be ill founded.

The first point taken in the opposing affidavit is that Nigel Caplen does not disclose any basis of authority for him to depose to the affidavit. This is a bad point and I have on a number of occasions pointed out that no deponent to any affidavit requires any authority to provide evidence of facts within

his knowledge. The act of attesting an affidavit is the same as giving evidence and is the personal act of the witness for which he requires no authority.

Turning to paragraph 4 of the affidavit in which the so called defence on the merits is outlined, Temple submits that as at the end of May 1997 defendant was not owing the sum of E15 449.12. It is claimed that in terms of the agreement of repayment the defendant should as between September 1995 and May 1997 have paid the sum of E79 380.00. but that between September 1995 and May 1997 the defendant had paid the sum of E71 482.75 leaving a balance of E7 897.25 as the arrears. In the following paragraph the deponent says that the difference was caused solely by the plaintiff's inconsistencies in calculating interest on the balance. Reference is made to what has been numbered annexure "A2". The deponent points to examples of what are said to be discrepancies and inconsistencies in the calculation of interest. These so-called discrepancies are not only explained by Caplen in an altering affidavit but in themselves do not show how the admitted arrears are in fact eliminated.

The deponent claims not to be aware of any notice of increase or decrease in the interest rate during the period but reference to the accounts that have been filed both by the plaintiff and the defendant makes it quite clear that the defendant was informed of and responded to a notice regarding the payment of interest. This is apparent from the fact that payments were made in terms of the notice which had been given.

I am satisfied that the defendant has no bona fide defence to the applicant's claim and that indeed the notice of intention to defend was given merely to procrastinate. The judgment will therefore be entered against the defendant for payment of the sum of E194 527 85 together with interest on the said sum at 19.5% pa calculated from the date of summons to the date of payment. It is further ordered that the properties mortgaged in terms of mortgage bond numbered 39/1989, 22/1990 and 151/1990 are executable. The defendant is to pay the costs of this action and such costs may be taxed on the scale applicable to attorney and client.

S.W. SAPIRE

ACTING CHIEF JUSTICE