

IN THE HIGH COURT OF SWAZILAND

GROWTH TRUST CORPORATION LTD.

Vs

LUCKY LUCAS DLAMINI

CIV. CASE NO. 94/98

CORAM S.W. SAPIRE

FOR PLAINTIFF L. KHUMALO

FOR DEFENDANT C.S. DLAMINI

JUDGMENT

(23/02/99)

This is an application for Summary Judgement

The plaintiff is the Liquidator of Growth Trust Corporation. The Defendant is one of the parties who received a loan from the Corporation, The Loan was for the purposes of purchasing a bus, which was to be hypothecated to the Corporation as security for the repayment of the loan.

The money was advanced and some repayments were made. The Defendant was dispossessed of the bus because the person from whom he purchased it, Leonard Dlamini, was not the owner. The true owner, being the finance company, from whom Leonard Dlamini had acquired the vehicle, repossessed it after it had been delivered to the Defendant

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Defendant in his affidavit opposing Summary judgment, states that at a meeting between him and an official of the Corporation it was agreed that the account would be frozen at the then outstanding amount of E98 272,64

The defendant claims that it was further agreed that "ways and means of assisting" him to obtain another bus to resume operations would be "looked into", and repayments would be resumed only when defendant "resumed operations". As Defendant has not resumed operations, he asserts the claim has not become due and payable. This defence is untenable. The alleged agreement, on which the defendant relies, even if proved, is so vague in its terms, that no court can give effect thereto.

Defendant questions the propriety of and the Plaintiff's entitlement to interest on the agreed indebtedness of E98 272.64, and points to an unexplained discrepancy between the amount claimed in the summons and that claimed in the declaration. There is some uncertainty in this regard, which means that this aspect of the matter will have to go to trial.

The Defendant also claims that no demand was made, and that for this reason summary judgment should be refused. In support for this submission, defendant relied on the judgment of Dunn J in Swaziland Development & Savings Bank v Phineas Vilakati (unreported Civ Case No 2436/95). The case is completely distinguishable. In that case the terms of the underlying agreement required demand to be made in order to render the balance outstanding due and payable. In the present case the loan facility was for a fixed period of twenty four months and repayable in monthly installments of E6 000 each commencing on 31st December 1996 Albeit the whole amount owing was not due for payment at the time of the issue of summons commencing action, at the time plaintiff made application for summary judgment the period of the loan had elapsed and the question of demand was irrelevant.

In terms of the provisions of the Rule of Court governing summary judgment procedure judgment may be granted in respect of a portion of the claim and leave to

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defend granted in respect of the remaining portion thereof. This I will do in the present case.

1. There will be summary judgement for
 - a) Payment by the defendant to the plaintiff of E98 272,64 Interest on the said amount calculated at 9% per annum from date hereof to date of payment
 - b) Costs of the suit including this application
2. In so far as the amounts claimed both as to capital and interest exceed the amounts of the judgment the defendant is given leave to defend and is to file a plea to the declaration within ten days of this judgment

S. W. SAPIRE CHIEF

JUSTICE