

IN THE HIGH COURT OF SWAZILAND

Civil case no. 583/99

In the matter between:

HUMBOLDT TRADING (PTY) LTD

APPLICANT

AND

BRIAN MARSH & ANOTHER

RESPONDENT

CORAM :

MATSEBULA J

FOR THE PLAINTIFF :

MR. HENWOOD

FOR THE DEFENDANT : MR. DUNSEITH

JUDGEMENT ON PROVISIONAL SENTENCE SUMMONS RULE 8(1)

14/05/99

The Plaintiff claimed provisional sentence on three separate cheques, two of which were signed by the 1st Defendant and one signed by both 1st and 2nd Defendants. 1. 1.1 A cheque of E20,000.00 dated 1st February, 1999 by virtue of a cheque drawn by 1st and 2nd Defendants in favour of Plaintiff on the Nedbank (Swd) Ltd, Matsapa and Plaintiff was legal holder thereof. On 3rd February, 1999 the said cheque was presented for payment at the said Nedbank (Swd) Matsapa Branch where it was payable.

The cheque was dishonoured by non-payment, there being no obligation upon the said bank to pay the said cheque.

A copy of the said cheque was annexed to the summons marked "A" and during the hearing of the matter the original was handed in.

First and second Defendants admit the signatures as being theirs on the said cheques.

- (a) 2. (a) An amount of E95 675 00 upon and by virtue of a cheque dated 24th June 1998 reflecting the said amount was drawn by 1st Defendant in favour of the Plaintiff on the Standard Bank (Swd) Ltd, Matsapa Branch. Plaintiff was the legal holder thereof. The said cheque was presented for payment at the said bank on 30th June 1998 and 24th July 1998 where it was payable but it was dishonoured by non-payment and there being no obligation upon the said bank to pay the said cheque.

A copy of the cheque was annexed to the summons as annexure "B" and the original was handed in at the hearing.

- (b) An amount of E45 000 00 upon and by virtue of a cheque dated 6th November 1998 for the said amount drawn by 1st Defendant in favour of the Plaintiff on Nedbank (Swd), Matsapa Branch of which cheque the Plaintiff is the legal holder thereof and which cheque was on the 10th November 1998 upon presentation for payment at Nedbank (Swd), Matsapa Branch, where same was payable but dishonoured by non-payment and there being no obligation upon the bank to pay the said cheque.

A copy of the cheque was annexed to the summons and the original was handed in at the hearing.

- (c) Plaintiff prays for interest at the rate of 9% per annum should be granted from dated of presentation to date of payment

(d) Costs of suit.

First and 2nd Defendants have filed affidavits in which they resist the granting of the provisional sentence. First Defendant admits his signatures on all cheques handed in and 2nd Defendant admits his signature on the cheque reflecting the amount of the E20 000

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00 and dated 1st February 1999 but denies that any of his signature appears on the other cheques.

According to the summons 2nd Defendant features in the claim for the cheque in respect of the amount of E20 000 00 only.

However, the defence raised by both the Defendants is basically the same. Admitting their signatures, they state that notwithstanding the presence of their signatures on the said cheques they had signed as signatories on behalf of a company known as "ON LINE DISTRIBUTORS (PTY) LTD" therefore they are not personally liable and/or indebted to the Plaintiff in the amount claimed or at all. They also state that at no stage in dealing with the Plaintiff did they ever assume personal liability for the debts of the "ON LINE DISTRIBUTORS (PTY) LTD.

Mr. Henwood on behalf of the Defendants submitted that the Defendants signed in their representative capacity. It was Mr. Henwood's submission that in order for the company to be held liable two signatories must sign. The company's name supplemented by the two signatories, constituted the composite signature of the company and the signatories had signed them in a representative capacity.

Mr. Dunseith on the other hand who appeared for the Plaintiff has referred the court to a number of authorities and decided cases e.g. AKASIA FINANCE VS DA SOUZA 1993(2) SA337 WLD @339 paragraph e — g reads as follows and I quote:

"In this regard, it must be emphasized that the two persons signing below the company's name had done so without qualifications. I have sympathy for the Defendant's cause. The cheques are not his cheques. The bank's account is not his account. The debt was not his debt. But he must be saddled with a personal liability because he did not qualify his signature, for on that basis he falls squarely within the terms of Section 24(1) of the BELLS OF EXCHANGE ACT 34/1964."

The Bills of Exchange Act which is South African referred to is similar to our BELLS OF EXCHANGE ACT NO.11/1902 Section 25(1) of our Bills of Exchange provide and

I quote:-

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"If a person signs a bill both as a drawer, endorser or acceptor as well as his signature indicating that he signs for on behalf of the principal or in a representative character he is not personally liable provided that if such a person had no authority to sign on behalf of such principal or in a representative character he shall be personally liable."

In this particular case, as in the case before court Defendants failed to qualify their signatures that is either writing "pp" or "for". In terms of this Act they ought to be dealt with in terms of Section 25(1) of the Bills of Exchange Act which provides that they will be liable notwithstanding that, according to them, they signed on behalf of the company.

In the result the Court grants provisional sentence as follows:-

1.1 Against first and second Defendants jointly and severally, the one paying the other to be absolved. The amount being E20 000 00 and interest thereon at 9%

per annum from date of presentation of the cheque to the day of payment.

- 2 (a) Against first Defendant in respect of the amount of E95 675 00 and interest thereon at the rate of 9% per annum calculated from date of presentation to date of payment.
- (b) Against 1st Defendant in respect of the amount of E45 000 00 and interest thereon at the rate of 9% per annum from date of presentation to date of payment.
- (c) Costs of suit.

J. M. MATSEBULA

JUDGE

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