IN THE HIGH COURT OF SWAZILAND

CIV. CASE NO. 2984/00

In the matter between

PROTRONICS NETWORKING CORPORATION (PTY) LIMITED	**PLAINTIFF**
And	
STANDARD BANK SWAZILAND LIMITED	**DEFENDANT**
Coram	S.B. MAPHALALA – J
For the Plaintiff	MR. SIBANDZE
For the Defendant	MR. L. KHUMALO

JUDGEMENT
23/11/00

Maphalala J:

This is an application for summary judgement brought in terms of Rule 32 of the High Court Rules. The applicant seeks payment of E73, 400-00 being an amount debited from its account by the respondent allegedly without its authority and/or mandate. The applicant further prays in its summons for interest on the said sum calculated at the rate of 9% per annum a *temporae morae* to date of payment; costs of suit including costs of this application and further and alternative relief.

The application is resisted by the respondent who filed an affidavit to that effect and the matter came before court for argument.

According to paragraph 4 of the plaintiff's particulars of claim the purported cause of action is that on or about the 5th September 2000, the defendant wrongfully and in breach of its duty to plaintiff as its customer, passed a debit entry against its account, the effect which plaintiff's funds in the said account were diminished by a sum of E73, 400-00.

Further at paragraph 6 of the particulars of claim the plaintiff avers that by reason of the aforesaid breach, plaintiff has suffered damages in the sum of E73, 400-00.

It was submitted on behalf of the applicant that the claim is for a liquidated amount of money falling within the parameters of a summary judgement application. To this

effect I was referred to ***Niekerk et al Summary Judgement: A Practical Guide at 3.3.1***. The relationship between the applicant and the respondent (client-banker relationship) is of creditor and debtor (see ***Understanding cheque Law*** – Sharok & Kid at page 46). The fundamental principle is that the bank cannot debit its customers account without due authority. To buttress this point Mr. Sibandze referred me to the law of ***Negotiable Instrument by Cowan*** at page ***365*** and the case of ***Bib Dutchman (S.A.) (Pty) Ltd vs Barclays National Bank Ltd 1979 (3) S.A. 267 (W) 280***. It was further argued that paragraphs 7.1, 7.2 and 7.3 of the respondent's affidavit contains hearsay evidence and should not be permitted (see ***Van Winsen et al The Civil Practice of the Supreme Court of South Africa*** at page ***368.)***

Mr. Khumalo on the other hand argued ***in contra***. His view on the matter is that the applicant's claim does not fall within Rule 32 (1) in that it is not founded on a liquid document, is for a liquidated amount of money, is for delivery of specified movable property or ejectment. On the merits he argued that unlike the relief that the pleaded facts may ordinary ground, the claim is for payment of money more in the nature of a debt. It would be different if the claim were either for specific performance or spoliation. To a claim for a debt the defence of counter-claim and set-off is competent and sufficient to resist summary judgment. According to Mr. Khumalo the defence is sufficiently and fully set out in defendant's affidavit at paragraph 7.1 to 8. These alleged facts may not be shut out by the court because when proved they shall ground a successful counter-claim of the defendant that leads to a set-off. That these facts are not denied by the plaintiff who has not filed a replying affidavit.

Lastly, it was argued on behalf of the respondent that obvious and glaring injustice would be done if summary judgment be granted.

These are the issues before me. I have read the papers file of record very carefully and have also considered the submissions made by counsel. An application for summary judgment is an extraordinary one which is "very stringent" in that it closes the door to the defendant, and which will thus be accorded only to a plaintiff who has, in effect, an unanswerable case. The merits and demerits of this case ought to be determined on this premise.

First and foremost, it appears to me that the application brought by the applicant is within the purview of Rule 32. The authority cited by Mr. Sibandze in the textbook called ***Understanding Cheque Law (supra)*** is good law. That the customer, i.e. the account holder, is the creditor, and the bank the debtor, in respect of any amount standing to the credit of the customer's, account. Thus, any amount paid to the credit of the customer, although usually called a deposit, is in truth a loan by the customer to the bank, which it can use immediately for its own purposes. The bank does not hold the money in trust for the customer, it holds it in its own right and undertakes to repay it (or any part of it) on demand (see ***Baylis's Trustees vs Cape of Good Hope Bank (1886) 4 SC 439-442)***. In ***casu,*** what remains for this court to decide are two issues, firstly, whether the amount claimed is a "liquidated amount" and secondly, whether the counter-claim advanced by the respondent is good.

On the first question, my view is that the amount sought is a "liquidated amount" within the meaning of Rule 32. Legal authority on this point is that a liquidated amount in money is an amount which is either agreed upon or which is capable of

speedy and prompt ascertainment (see ***Erasmus "Superior Court Practice" at B1-210*** and cases cited thereat).

On the question of the counter-claim raised by the respondent it is my view that the defence advanced therein is competent and sufficient to resist summary judgement. On my reading of paragraph 7. 1 to 8 of the defendant's affidavit I am satisfied that a ***bona fide*** defence has been advanced moreso these facts have not been challenged by the applicant in a replying affidavit. Counsel for the applicant argued facts in rebuttal from the bar. Thus leaving me with no alternative but to accept the uncontroverted version of the respondent in its opposing affidavit. As to their admissibility I wish to refer to the case of ***Maharaj vs Barclays National Bank 1976 (1) S.A. 416*** which I find apposite. Corbett JA in that case expressed the following:

> "While the defendant need not deal exhaustively with the facts and the evidence relied upon to substantiate them, he must at least disclose his defence and the material facts upon which it is based with sufficient particularity and completeness to enable the court to decide whether the affidavit discloses a ***bona fide*** defence".

The learned judge went further to say:

> "At the same time the defendant is not expected to formulate his opposition to the claim with the precision that would be required of a plea, nor does the court examines it by the standards of pleading (see ***Estate Potgieter vs Elliot 1948 (1) S.A. 1084 © at 1087***)".

In *casu* I am of the view that the matter goes to trial.

Costs to be costs in the cause.

S.B. MAPHALALA
JUDGE