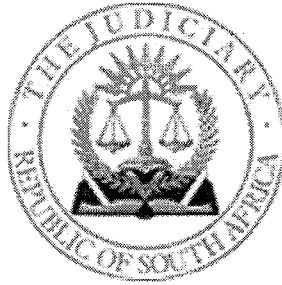


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case No: 15869/2018

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
13 Dec. 2018	<i>Ch. Badenhorst</i>
DATE	CHJ BADENHORST AJ

In the matter between:

IZAK SMOLLY PETERSEN N.O.

First Applicant

& Three Others

Third to Fourth Applicants

and

ARNOLD MANIKUM ROY COLLOPEN

Respondent

J U D G M E N T

BADENHORST AJ:

[1] The applicants make application for summary judgment against respondent, who stood surety for the obligations of The Board Junction (Pty) Limited arising from a written agreement of lease which was signed by the tenant on 30 May 2014.

[2] The suretyship relied on by the applicants (plaintiffs) is dated **28 May 2014**.

[3] Clause 11 (a) of the suretyship provides as follows:

*“the amount of the debtor’s indebtedness and of me/us hereunder to the creditor/s at any time and the fact that the due date of payment of the whole, or as the case may be, portion of such amount has arrived, **shall be determined and proved by a certificate** signed by a director, company secretary, credit manager or internal accountant of the creditor/s or of the agent of the creditor/s.”*
[emphasis added]

[4] The applicants, as they are required in terms of the suretyship, rely on a certificate dated 19 April 2018. The signatory certifies an amount owing and payable the respondent “in respect of a suretyship agreement dated **24 May 2014**”.

[5] Besides a number of other defences, the respondent takes the point that the certificate – which is an essential part of plaintiffs’ cause of action – does not certify any amount owing and payable in terms of the correct suretyship (dated, not 24 May 2014 but 28 May 2014).

[6] The principle which applies in proceedings of the present kind is expressed as follows in *First National Bank of SA Ltd v Myburgh* 2002 (4) SA 176 (C):

*“[9] Because of the drastic nature of the relief sought, the Court has, in terms of Rule 32(5), a discretion to grant the defendant leave to defend the action even where he has failed to comply with Rule 32(3)(b). **The Court will grant summary judgment where plaintiff has an unanswerable case. If the Court has the slightest doubt, the Court will not grant summary judgment.** (Fourlamel (Pty) Ltd v Maddison 1977 (1) SA 333 (A) at 347H; Gilinski v Superb Launderers And Dry Cleaners (Pty) Ltd 1978 (3) SA 807 (C) at 811E - H.)”*
[emphasis added]

[7] It may well be that the date stated in the certificate is a mere typographical error, but I cannot exclude “*the slightest doubt*” as to whether the case against respondent is unanswerable.

[8] It follows that on this point summary judgment cannot be granted. It is thus not necessary to consider the rest of respondent’s defences.

[9] I accordingly make the following order:

- (a) The application for summary judgment is refused and the respondent (second defendant) is granted leave to defend the main action.
- (b) The costs of the summary judgment proceedings will be costs in the cause.



CHJ BADENHORST AJ
Acting Judge of the High Court of South Africa,
Gauteng Local Division

APPEARENCES

For the applicant: *Mr J.G. Dobie*
Instructed by: *Alan Levy Attorneys*
For the respondent: *Mr R.J. Bouwer*
Date of hearing: *11 December 2018*
Date of judgment: *13 December 2018*