AGRICULTURAL DEVELOPMENT BANK OF ZIMBABWE
T/A AGRIBANK

VERSUS

PRITCHARD ZHOU

AND

PERSEVIARANCE ZHOU

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 10 OCTOBER, 12 NOVEMBER 2012 AND 31 JANUARY 2013

Mrs C Bhebhe for the applicant
Mr H Shenje for the respondent

Opposed Court Application

CHEDA J: This is an application for a summary judgment.

Applicant is a duly registered commercial Bank carrying a business under the name and style of Agricultural Development Bank of Zimbabwe t/a Agribank.

First and second respondents are farmers carrying on business from sub-division 4 of Lot 4 of Sherwood, Kwekwe.

On or about the 27th October 2009 at the special instance and request of first and second respondents, applicant advanced a sum of $52827-00 to the respondents under the following terms and conditions:

(1) the advanced loan was a sum of $52827;

(2) it was to be used as working capital for farming operations;

(3) the loan was to be repaid on or before the 30th June 2012;

(4) the prescribed rate of interest was to be paid only in the event of respondents' failure to repay the said loan in full by the 30th June 2012;

(5) the loan was to be secured by a Mortgage Bond in favour of applicant over a certain piece of land situate over stand No. 697 Ruwa Township of Stand 659 Ruwa Township

situate in the district of Goromonzi held by defendants under Deed Transfer No. 3198/96 dated 7 May 1996.

(6) In the event that the respondents breached the agreement and/or failed to pay the instalment due, the whole amount outstanding would immediately become due and payable. In that event the respondents would be liable to pay the costs of recovering the amounts on an attorney and client scale as well as collection commission.

In compliance with the loan agreement Respondents agreed that,

Stand No. 697 Ruwa Township of Stand 659 Ruwa Township situate in the district of Goromonzi held by Respondents under Deed of Transfer No. 3198/96 dated 7 May 1997 was specially hypothecated by a Note of Hand from Applicant;

Respondents have since breached the loan agreement. On the 29th April applicant issued out summons against respondent which summons they defended on the 17th May 2011. It is that defence which has led to the present application.

Respondents opposed the application. The basis of the opposition is that their failure to repay the loan was due to the fact that one of the integral parties, that is the Grain Marketing Board [hereinafter referred to as "GMB"] was to avail the inputs which should be purchased through funds from applicant. It is their further assertion that GMB failed to avail inputs timeously resulting in respondent's failure to purchase the inputs in time for that cropping season, consequently the 2009 and 2010 cropping season was a complete write-off.

The crux of respondent's argument is that GMB failed to timeously avail its inputs to them. This indeed may be a valid argument, but, what comes into sharp focus is whether or not GMB was part of the loan agreement. If it was, then, respondents should have applied for their joinder on the basis of either financial or proprietary interest, such as joint owners, joint contractors or partners, see *Morgan and another v Salisbury Municipality* 1935AD 167 at 171 and *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 AD at 656-57.

Upon perusal of the loan agreement, GMB does not feature, therefore, it is clear that it was not part of the agreement. Indeed Clause 2 of the agreement refers to the purpose of the purchase for the facility, being solely for the procurement of agricultural inputs.

However, there is no mention, reference or direction to purchase the said inputs from a specific supplier, in particular GMB. In the absence of such reference or direction, it is only reasonable to conclude that respondents were at liberty to purchase them from any supplier as the loan had been advanced to them. Their failure to purchase the inputs from any supplier when they had resources to do so solely, firmly and securely rests with them.

The purpose of a summary judgment procedure is designed to enable a plaintiff whose claim falls within a certain class of claims to obtain judgment without the necessity of going to trial inspite of the fact that the defendant has filed a defence, see *Herbstein and Van Winsen*, The Civil practice of the Superior courts in SA 3rd ed. 1979. P302. The remedy, therefore, is an extra ordinary one and very stringent as it does not permit the respondent to successfully raise its defence on the basis that plaintiff's case would have been in the opinion of the court unanswerable see *Schoeman v New Mark 1919 CPD 55; Maharaj v Barclays National Bank Ltd* 1976 (1) 418 (AD) and *Breitenbach v Fiat SA (Edms)* BPK 1976 (2) SA 226 (T).

Applicant has proved that indeed there exists a loan agreement between itself and respondents. Further that, respondents have breached a major and material condition of the contract namely by its failure to pay back the loan by the agreed date. Respondents on the other hand, not in so many words, admit that they failed to pay back the loan, but, however, have sought to justify their failure on the basis of their inability to purchase their agricultural inputs from GMB. This is argument can not be legally sustained. What respondents have failed to come to terms with is that the issue of GMB was not a condition precedent to their own fulfilment of their obligation towards applicant.

In any case any variation, amendment or alteration of the loan agreement was to be in accordance with the said clause which further clearly sets out the procedure to be adopted to effect that change. This fact makes applicant's case an unanswerable one.

I entertain no reasonable doubt, whatsoever, that applicant's claim is properly before the court and is above all clear and in that regard unanswerable by the respondents. Respondents' defence that applicant was aware that they failed to access agricultural inputs timeously thereby rendering their inability to pay back the loan is unconvincing and not valid at law. It is, therefore, not *bona fide* and should fail.

In conclusion the following order is made:

Order

(a) Respondents shall pay of the sum of US$33, 127.41 to applicant;

(b) pay interest on the said sum at the prescribed rate calculated from the 1st of July 2011 to the date of payment.

(c) that the piece of land Stand No. 697 Ruwa Township of Stand 659 Ruwa Township situate in the district of Goromonzi, held by the 1st Respondent under Deed of Transfer NO. 3198/96 dated the 7th May 1996 be and is hereby declared to be specially executable.

(d) that respondents shall pay the cost of suit on an attorney client scale plus collection commission.

Coghlan and Welsh, applicant's legal practitioners
Shenje and company, respondents' legal practitioners