

**Standard Chartered Bank
Versus
Dangarandove Land & Cattle Company
Private Limited
Andre Coetzee
Valerie Jane Coetzee
And
Adore Gold (Pvt) Ltd**

HIGH COURT OF ZIMBABWE
PARADZA J,
HARARE, 10 July, 2002 and 3 December, 2003

Adv Mazonde for plaintiff
Mr C Venturas for defendants

PARADZA J: Plaintiff issued summons against the four respondents seeking payment of the sum of \$6 723 504,35. That claim, according to plaintiff relates to certain monies allegedly loaned and advanced to first defendant on an overdraft facility granted to first defendant on his current account with the plaintiff. The other part of the claim relates to interest and costs on an attorneys/client scale. The second, third and fourth respondents were joined as parties to this claim, because they had guaranteed as sureties and co-principal debtors for the repayment of the above claim. Certain guarantee forms duly signed by the defendants were produced in court to confirm this.

The defendants in their pleadings denied that there was an overdraft facility in force at the time this cause of action arose. They also stated that their entire liability in respect of this claim was extinguished when it was taken over by a company called C C Sales Limited which company had reached some agreement with a company called Meat Mark Co-op (Pvt) Ltd.

In addition to defendant's plea, a counterclaim was filed by the defendants seeking an order that plaintiff be required to render a statement of account itemizing in full how certain proceeds of sale of some cattle that were repossessed by Meatmark Co-op Ltd were appropriated.

Certain facts seem to be common cause in this matter. I will itemize those facts I find to be common cause as follows -

First defendant was a cattle ranching company which was operating from a farm called Minverwag Farm, Chivhu. It was operating for quite sometime prior to the time the cause of action arose. Of significance is the fact that sometime around 25 April, 1994 first defendant was operating a current account with the bank. Through the use of the account, first defendant was granted a facility where it could overdraw on its current account. At the 26 November, 1997 that account was overdrawn in the sum of \$605 346,00.

Sometime between 1996 and 1997 the bank through its Agricultural Loan Manager, Marinus Petrus Grau launched a scheme involving Meatmark to assist cattle breeders, to finance their operations. The aim of the scheme was to contribute towards efforts to rebuild the national beef herd. It must be emphasized from the outset that this effort was purely initiated and was the mastermind of Marinus Grau, the bank's Agricultural Loan Manager.

In so creating this scheme, the bank created for itself an obligation to provide a bank guarantee for whoever wanted to participate in the scheme. It is not in dispute that in fact this is how the liability claimed by the bank arose *vis-à-vis*, the respondents.

It is not in dispute that quite a substantial number of breeders were financed to the tune of *eighty per centum* by Meatmark Co-op Limited and of this liability the bank guaranteed *eighty per centum* of the capital funding. Exhibit 2, namely the Breeder Finance Agreement shows that a total of three thousand beasts were financed in this scheme.

It is not in dispute that indeed the Breeder Finance Agreement between Meatmark Co-op Limited and the first defendant represented by the second

defendant was duly signed on the 15 September, 1997. Of significance contained in that agreement is the rate of interest which was pegged at 18.25% per annum which was payable quarterly on 20 August, 20 November, 20 February and 20 May annually.

Also of significance as contained in Clause 3 of the agreement is that the defendants were required to repay the capital funding as follows -

One-third of the amount on 20 May, 1999 and a final instalment representing the remaining two-thirds of the amount on 20 May, 2000. The mode of payment was by way of promissory notes signed prior to the disbursement of any such funds. It is not in dispute that such promissory notes were indeed furnished and were met.

It is not in dispute that despite certain insignificant disagreements here and there, Meatmark was finally paid in full as agreed on the 20 May, 2000. Page 36 of the Bundle of Documents that was furnished bears testimony as to when the final capital amount and interest was paid. The closing balance as at 31st December, 2000 shows a zero balance. That took care of any indebtedness which was owed by the defendants to Meatmark Co-op Ltd, which was paid by way of promissory notes issued by the Bank in favour of Meatmark.

In February 1999 the defendants' farm was sold without their knowledge to Government by the owner of the farm. Due notice was given to the defendants to vacate the farm within ninety days. A plan was to be worked out to deal with the situation in so far as it related to any amount that was outstanding due and payable, if any.

What happened subsequently was that a company called C C Sales Limited, a cattle auctioneer company emerged and got involved in the scheme that subsequently saw to the selling of the cattle belonging to the first defendant. One of the conditions of the agreement was that the cattle were to be sold between March

to the end of July 1997. CC Sales then undertook to pay the first defendant's indebtedness to the bank by way of instalments each amounting to four million dollars payable, firstly, by the end of May 1999, then the end of June 1999 and the balance including interest at the end of July, 1999. Through the participation of Mr Grau, it was directed that all these payments were to be made directly to the bank, and any other arrangement as indicated above was with the total agreement of the bank. In this regard I refer to the letter dated 22 March, 1999 found on page 4 of the bundle of documents. It was a letter written by P C L Bright of Meatmark Co-op Limited to P Macsporran. It reads in part as follows -

"I received a call from Tim Coghlan (C C Sales) on Friday. He has had a meeting with Andre Coetzee and they have agreed to sell off all stock during May to July. C C Sales expects to pay us

May \$4,0m

June \$4.0m

July \$4.5m

C C Sales will do all the paper work and send the cheques to us.

Mr Beebe of Standard Chartered Bank has been informed and is happy with the arrangement and gives his OK to the plan.

Tim Coghlan will put the arrangements in writing.

I have sent copies of the report to Coetzee and to Beebe.

P C L Bright".

Subsequent to that arrangement, C C Sales effected a payment to plaintiff of \$4,0m on 28 May, 1999. The payment is acknowledged as having been received by the Bank under cover of the letter by N J Beebe to C C Sales Limited. It reads as follows -

"We acknowledge receipt, with thanks, of your initial payment of \$4.0m in terms of your letter of undertaking dated 22 March 1999.

In terms of C C Sales undertaking all monies due under the Meatmark scheme including interest will be met. The initial \$4.0m payment reduces the

**HH 198-03
HC 5655/00**

capital amount due from the initial \$12,2 million to \$8.2 million. In addition the overdraft comprising unpaid interest/commission on the Meatmark Loan, currently amounts to \$3,521 126,87 (as at 24 May 1999) with accrued interest of \$124 085,77.

We look forward to your further remittances.

Yours faithfully,

N J Beebe".

It is important to note the certainty with which Beebe wrote that letter. He was confident that the indebtedness of the defendants in terms of the Meatmark scheme will be taken care of. Not only would the capital amount be taken care of but also interest and commission.

C C Sales as indicated above had undertaken to pay the whole amount by 31st July, 1999. On 27 August, 1999 Beebe wrote a letter of demand of payment in full of the balance of the monies due to the bank in the sum of \$8 137 400,00. In addition Beebe wanted to be paid an amount of \$4 007 817,65 relating to the interest and commission. That amount, Beebe wanted paid by not later than 30 September, 1999 failing which the matter would be handed over to the their lawyers, Honey and Blanckenberg, for action. A similar letter was written by Messrs Honey and Blanckenberg on 7 September, 1999 well before the deadline fixed by Beebe, this time not to C C Sales Limited but to the defendants. I must say, to me, this letter was completely out of step with what was happening between the Bank and C C Sales Limited. Instead of Honey and Blanckenberg proceeding against C C Sales who had taken over the liability by the defendants' they chose to proceed against the defendants directly. There was no justification for that kind of action against the defendant. In any case the bank and C C Sales were still communicating and were talking on the telephone as is depicted from the contents of the letter by Beebe dated 27 August, 1999.

**HH 198-03
HC 5655/00**

On 30 September, 1999 C C Sales made a payment to the bank in the sum of \$8 137 400,00 representing the capital amount demanded by the bank in their letter of 27 August, 1999. A copy of a cheque dated 30 September, 1999 payable to the bank was produced and forms page 10 of the bundle of documents. Although it appears to have been issued by the defendant, the letter written by the bank and signed by Grau and S Burutu confirms that in fact the capital amount of \$8 137 400,00 was settled by C C Sales Limited. (See page II of the bundle of documents). That letter addressed to Meatmark Co-op Limited by the bank reads as follows -

"We refer to our recent discussion and confirm that Dangarendove Land & Cattle Company (Private) Limited, liability of \$8 137 400,00 (Eight Million One Hundred and Thirty Seven Thousand Four Hundred dollars) was settled by C C Sales Limited who in turn acquired the 800 cattle which had been financed under the then Breeder Finance Agreement. C C Sales Limited have since entered into a separate Breeder Finance Agreement to re-finance the same branded 800 cattle under the Meatmark Breeder Finance Scheme resulting in a total liability of \$9 251 206,64 (Nine Million Two hundred and Fifty One Thousand Two Hundred and Six Dollars and Sixty Four Cents) representing a capital amount of \$8 137 400,00 and charges totalling \$1 113 806,64 (One Million One Hundred and Thirteen Thousand Eight Hundred and Six Dollars and Sixty Four Cents) as per the following documentation -

*Copy Cattle Finance Scheme Bank Guarantee dated 23 September 1999
*Meatmark Co-op Limited Breeder Finance Agreement Number MO27/B.

Please acknowledge safe receipt by signing and returning the attached copy of this letter.

Yours sincerely,

S BURUTU
SENIOR MANAGER
AGRICULTURAL BUSINESS CENTRE

M P GRAU
HEAD- AGRICULTURAL
BUSINESS DIVISION"

What I note from that letter is that no mention is made at all about any outstanding liability on the part of the defendants. In this regard I am referring to the amounts of \$4 007,817,65 which was repeatedly quoted not only by the bank to C C Sales Limited but by Honey and Blanckenberg to the defendants in the letters referred to above. Reference is made to discussions which seem to have been held between Meatmark and the bank. Those discussions ended with C C Sales meeting

their liability and in addition acquiring an additional eight hundred head of cattle under a new scheme. Subsequent correspondence between the bank and CC Sales do not make any reference to any outstanding amount which C C Sales had undertaken to pay. Instead correspondence between C C Sales and the bank seems to relate to another phase of the finance arrangement which was covered by a bond in the sum of \$30 million. In this regard I am referring to pages 12 and 13 of the bundle of documents.

I have noted that Meatmark received their final payment in respect of this scheme in May 2000. C C Sales had made a payment to the bank in September 1999. It is puzzling to try to understand where those funds were from 30 September 1999 to the day they were finally paid to Meatmark a period of approximately seven months.

Next in the bundle of documents is a letter on page 14 written by N Mahuni account manager to the defendants demanding payment in the sum of \$6 341 408,72 together with interest at 71% per annum. A subsequent letter dated 24 July 2000 from the same Mahuni seems to advise of the changes in the bank's minimum lending rate as well as the penalty rate. One cannot help but feel that Mahuni was not even aware of the payment that had been made in settlement of the defendants' indebtedness to the bank by C C Sales as contained in the bank's letter to Meatmark dated 4 October, 1999.

Another significant feature that came out in evidence is proof of sales of cattle belonging to the defendants by C C Sales between the period 7 June, 1999 and the end of 21st October, 1999. In my addition is correct, looking at the various sellers' notes contained in the bundle of documents found from page 22 to approximately page 37, C C Sales made nett sales of approximately \$16 888 982.00. No statement of account has been rendered to the defendants to show how that money was

appropriated. In their counter-claim the defendants seek an order that a statement of account be furnished to them by the bank to advise them exactly how much those sales of cattle realised and how much of that amount went towards the liquidation of their debt in respect of this scheme.

In our law contracts are always entered into by agreement. They are also varied and discharged by agreement unless the variation has been brought about because an obligation has been replaced or altered by judgment and or by compromise. It is therefore within the liberty of the parties contracting to agree to replace or transfer an obligation from one of them to a third party, subject of course, to consensus being obtained from the third party. This is what has been known in our law as delegation.

Delegation has been regarded as a form of novation whereby, by agreement involving all the parties concerned, a third party is introduced as a debtor in substitution of the original debtor. When that happens the original debtor is automatically discharged. (See *Christie's The Law of Contract in South Africa*, 3rd Ed. p 513). The onus of proving such delegation lies squarely on the person who claims its existence. In the case before me the onus lies on the defendant to prove that indeed by delegation, the first defendant was discharged of any liability in respect of the amount claimed by the bank.

It is has been the position always in our law that such delegation may be express or implied from the circumstances, including the conduct of the parties. In other words if the parties conduct themselves in such a way that a reasonable conclusion can be reached that indeed all the parties were in agreement and that a delegation exists, it would be correct for the court to conclude that a delegation did in fact exist. The parties will manifest what is in their mind through correspondence. In the case before me a wealth of letters was exchanged between the parties. As

already analyzed above the letters show that extensive discussions and negotiations involving the bank, the defendants, Meatmark and C C Sales took place. The end result of those negotiations was a full and unequivocal assumption of responsibility to liquidate the debt held by the defendants on the part of C C Sales. Everybody, including the bank, the plaintiff in this case, was happy with that arrangement. In fact by the end of the day the payments that the bank wanted were effected by the third party, C C Sales. C C Sales had accepted the responsibility for payment of the entire capital claim including all other charges and. Under those circumstances who would say that the defendant had not been discharged from liability. Delegation had in fact been effected. If not expressly through extensive negotiations and discussions among all the parties concerned, their conduct pointed towards the creation of such delegation.

I am satisfied the plaintiff has not proved its case against the defendants. In addition the defendants are entitled to the relief sought in the counter claim. As already indicated above a substantial number of animals was sold by C C Sales. The various invoices show payments in excess of sixteen million dollars. The defendants' indebtedness to the bank was way below the amount stated. They deserve to know exactly what happened to the proceeds of the sale of the cattle. I am not suggesting that they are entitled to some kind of refund. That would be subject of a different claim should the need arise. I therefore make the following order -

1. Plaintiff's claim is hereby dismissed;
2. Plaintiff is hereby directed and ordered to render a full account at his own expense duly supported by such vouchers as may be necessary, of the amounts received from the sale of the defendants' cattle;
3. Plaintiff is ordered to bear the costs of suit and that of defendants' counterclaim.

Honey & Blanckenberg, plaintiff's legal practitioners
Byron Venturas & Partners, defendant's legal practitioners