

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	DATE DELIVERED: 30/5/2014

30/05/14  
Case number: 29025/2013

In the matter between

STANDARD BANK OF SOUTH AFRICA LIMITED

Plaintiff/Applicant

(Registration number: 1962/000738/06)

and

BLUE RAINBOW BINS CC

First Defendant/Respondent

(Registration number: 2003/100335/23)

COMPACT PROPERTIES CC

Second Defendant/Respondent

(Registration number: 2002/063311/23)

CHARL WHITE

Third Defendant/Respondent

SHARON MARGARET WHITE

Fourth Defendant/Respondent

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JUDGMENT

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BAM J

1. The applicant issued summons against the respondents for payment of the amount of R678 613,40 as well as interest and costs, and that a certain fixed property be declared specially executable. The claim was based on money borrowed by the respondents, after collateral security was furnished by the respondents in the form of a mortgage over an immovable property, and the respondents' failure to repay the loan. The property was not the primary residence of the respondents.

2. On 19 August 2013 the applicant applied for summary judgement. The application was opposed and the defendants were granted leave to defend.
3. On 29 October 2013 the respondents filed their plea. The plea pertaining to the averments in the applicant's particulars of claim in respect of paragraphs 4 to 28, in which paragraphs the applicant made all the averments founding its claim against the respondents, consisted of a bare denial. This prompted the applicant, on 6 December 2013, to lodge an exception with the prayers that the exception be upheld, that the plea be struck out, and that the respondents should pay the costs. The application was served on the respondents' attorneys of record on 12 November 2013. The respondents failed to file a notice to oppose the application and the application was enrolled to be heard 19 February 2014 on the unopposed roll after the Notice of Set down was served on the respondents' attorneys of record on 11 December 2013. The applicant's Practice Note was filed on the 14 February 2014 indicating that the application was not opposed.
4. On 19 February 2014 at 9h30, the applicant moved for an order that the exception be upheld, that the respondent's plea be struck out, and that the respondents be ordered to pay the costs. In addition, the applicant moved for an order that judgement by default should be granted to the applicant in regards to the amount owing to the applicant and an order declaring the property in question to be executable as claimed. There was no appearance on behalf of the respondents. The matter, however, was stood down to 10h00, the standard time the court proceedings in the unopposed court commence, in order to provide for any possible misunderstanding in regards to the time issue. At 10h00 I was informed by counsel appearing for the applicant that the respondents' legal representative has indicated that the application was opposed. The matter was then stood down to the end of the unopposed roll.
5. When the matter was again called the respondents were represented by counsel. I was informed that the application was opposed. Counsel for the respondents was however not briefed with any affidavit or other document on behalf of the respondents explaining the respondent's non-compliance with the Rules. Counsel was unable to explain why there was no explanation tendered by the respondents. The applicant's counsel then moved for the order as prayed and I granted the order by default.

6. Subsequently the respondents filed an application for leave to appeal. That application was enrolled for 17 March 2014 at 9h00. The applicant opposed the application and raised the point that the respondents' remedy was to apply for the rescission of the order of 19 February 2014 in view of the fact that the order was granted by default.
7. The issue was debated by counsel for the respondent who conceded the point. I agreed with the applicant's contention and the application for leave to appeal was struck off. I then raised the point whether the respondent's attorney should not be ordered to pay the wasted costs. I then postponed the matter in order to grant the respondents' attorney the opportunity to address the issue.
8. The respondent's attorney duly filed an affidavit explaining, amongst others, that he experienced problems to get proper instructions from his clients and that, after having consulted with counsel decided to lodge an application for leave to appeal.
9. On 23 May 2014 the issue of the costs order was argued before me. After having again considered the issue I arrived at the conclusion that although it may be unfair to order the respondents to pay the costs, it cannot be said that the respondents' attorney was *mala fide* or that he was grossly negligent in lodging the application for leave to appeal. See *Multi-links Telecommunications v Africa Prepaid* 2014(3) SA 265 GP.  
This may however be a borderline case.
10. Accordingly I concluded that the respondent's should be ordered to pay the costs.

Order

1. The respondents are ordered to pay the costs of 17 March 2014 and 25 May 2014 on the scale as between attorney and client.



A J BAM JUDGE OF THE HIGH COURT

28 May 2014