

IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

12 | 3 | 14
CASE NO: 71399/2011

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO.
(2)	OF INTEREST TO OTHER JUDGES: NO.
(3)	REVISED.
6/03/2014	<i>Malindi</i>
DATE	SIGNATURE

In the matter between:

GREENHOUSE FUNDING (PTY) LTD

Applicant

v

MARIUS PIETER WILLEMSE

1st Respondent

ALECIA WILLEMSE

2nd Respondent

DATE OF HEARING: 2 February 2014

DATE OF JUDGMENT: 12 March 2014

JUDGMENT

MALINDI AJ

INTRODUCTION

- [1] The Applicant in this matter initially issued summons against the first and second respondents on 14 December 2011.
- [2] The summary judgment was set down for hearing on 2 April 2012. However, on 26 March 2012, a week before the summary judgment hearing, the first respondent entered into a settlement agreement with the plaintiff. The first respondent was responsible for the debt and the second respondent, to whom he was married was not pursued in respect thereof.
- [3] The respondent resists the application on the grounds that a S129(1)(a) notice in terms of the National Credit Act was not issued to him, which requires that it be sent to a defaulting consumer in respect of a specific credit agreement before debt enforcement. It is further submitted that since the applicant does not refer to such notice in its founding affidavit nor in the replying affidavit, I should hold that it was never sent. The respondent, denies having received it in any way. He submits therefore that this application should not be granted for lack of the S129 notice in the main proceedings.
- [4] In substantiation of the denial of receipt of the notice the respondent asserts that the notice by registered mail was diverted by the postal services to an incorrect post office.

- [5] The respondent submits, lastly, that the settlement agreement which was envisaged to be made an order of court in terms of Rule 41(4) in the event of a default on the part of the respondent is incapable of enforcement because the applicant has not taken the step envisaged in Rule 41(4), that is, that the agreement be made an order of court first.
- [6] The applicant on the other hand submits that the agreement was entered into in order to afford the respondent an opportunity to meet his obligations. It was envisaged that no further dispute would arise and that settlement will be enforced.
- [7] The applicant submits further that the S129 notice was attached to the summons and the respondent entered his intention to defend. The settlement agreement came after the S129 notice and after the intention to defend. The respondent therefore cannot aver that he did not receive the notice.
- [8] The applicant submits that in any event the proceedings in this case were commenced before the *Sebola v Standard Bank of SA*¹ case which ruled that the credit provider must make averments that will satisfy the court that the S129 notice, on a balance of probabilities, reached the consumer.

¹ 2012 (5) SA 142 (CC)

[9] In this case the respondent has responded to the notice as envisaged by S130(1)(b)(i) by entering into the settlement agreement. The respondent does not state what he has done for nearly 2 years to satisfy the agreement or to make other arrangements as set out in S129(1)(a), which he received as attached to the summons.

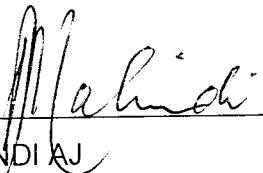
[10] I am satisfied that the applicant issued a proper S129 notice which was received by the respondent and that the parties developed and agreed on a plan to bring the payments under the agreement up to date and that the respondent has defaulted in that regard. The applicant avers in its replying affidavit that the agreement was made an order of court on 2 April 2012.

[11] The applicant is entitled to the prayers in terms of the Notice of Motion because in terms of Rule 41(4) a party may approach the court for the settlement to be made an order of court and also seek judgment for the outstanding obligations even if the agreement had not been made an order of court.

[12] I make the following order:

1. Payers 1 – 5, inclusive, of the Notice of Motion dated 4 June 2013 are granted.

SIGNED AT PRETORIA ON THIS 12TH DAY OF MARCH 2014


MALINDI AJ
Acting Judge of the High Court

Appearances:

For Applicant: Adv J H Mollentze

Instructed by: Velile Tinto & Associates Inc.

For Defendant: Adv C Richard

Instructed by: Jordaan Attorneys