

THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA



CASE NUMBER: 70641 / 2014

DATE OF HEARING: 11 OCTOBER 2016

DATE OF JUDGMENT: 21 OCTOBER 2016

In the matter between:

- (1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO
(3) REVISED.

21-10-2016

DATE

SIGNATURE

HONG KONG LAND INVESTMENTS CC

First Applicant

KIT MAN POON

Second Applicant

MEI WAH POON

Third Applicant

and

STANDARD BANK OF SOUTH AFRICA LIMITED

First Respondent

SHERIFF OF THE HIGH COURT

Second Respondent

J U D G M E N T

AVVAKOUMIDES, AJ**INTRODUCTION**

- [1] This is a rescission application by the applicants pursuant to a default judgment granted against the first applicant pursuant to a breach of loan agreement secured by a mortgage bond over the first applicant's immovable property. The applicants represented themselves. The applicants failed to file heads of argument and a practice note as required by the practice directive of this court. The first respondent filed its heads and practice note.

BACKGROUND

- [2] The first respondent issued summons against the first applicant as the mortgagee, it having breached the loan agreement by failing to maintain the monthly instalments in terms of such agreement. The second and third respondents were cited as sureties and co-principal debtors. The summons was served personally upon the second applicant as surety and on behalf of the first applicant main. The summons was served on the third applicant by way of service upon the second applicant. It is commons cause that the second and third applicants are married to each other. Having filed an appearance to defend default judgment was granted against all three applicants.

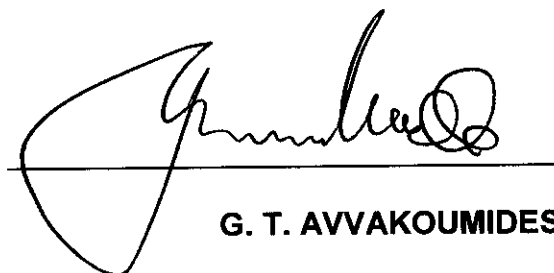
THE APPLICATION

- [3] The applicants submitted that they had made arrangements to pay off the arrears with the first respondent, and despite such arrangements, the first respondent proceeded with the application for judgment. The applicants submitted that they had not received a section 129 notice and that they had impressed this upon the first respondent. No details are furnished as to who this was conveyed to at the first respondent. At the hearing of this application I was advised by counsel for the first respondent that the applicants had signed the founding affidavit which was prepared by someone purporting to assist them but that they did not know what the founding affidavit dealt with. They had paid someone to assist them.
- [4] The gist of the defence set out in the founding affidavit is the absence of the section 129 notice. No proof of postage is alleged to exist and the applicants' constitutional rights are said to have been infringed upon. An attack is also made on the computation of the certificate of balance. Lastly the applicants state that their movables were not excused first before the ensuing sale in execution of the mortgaged property. The first applicant is a corporate entity and as such is not afforded the same protection and an individual. I rely on the decision of *Firststrand Bank Limited v Folshcer and Another* 2011 (4) SA 314 (GNP) in this regard. The absence of execution of the movable does not warrant any comment. The complaint about the certificate of balance is not supported by any evidence as to why it should not have been accepted.

- [5] As at July 2014 the arrears were in excess of R145 000.00 with monthly instalments of R42 270.37. As at the date of signature of the answering affidavit the arrears increased to R907 249.68 with a similar instalment. The arrears are computed to be 21.398 months in arrears. The summons was served on 6 October 2014 and the notice of motion for this application appears to have been issued on 10 August 2016. The application does not contain any allegations to support condonation for the application being brought so late. This notwithstanding the application is alleged to have been brought in terms of rule 31 (2) (b). This submission is unsustainable given the time period contained in the said rule.

CONCLUSION

- [6] The alleged arrangement with the first respondent is the only defence raised by the applicants, save for the issues dealt with above. The applicants have not make out a proper case for the relief sought and consequently the application stands to be dismissed. I make the following order: The application is dismissed with costs.

A handwritten signature in black ink, appearing to read 'G. T. Avvakoumides', is written over a horizontal line.

G. T. AVVAKOUMIDES
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

DATE: 21 OCTOBER 2016

Representation for Applicants:

Counsel: In Person

Instructed by:

Representation for the First Respondent:

Counsel: P. I Oosthuizen

Instructed by: S. Roux Inc.