

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CaseNumber:76715/2019

(1) REPORTABLE YES / **NO**

(2) OF INTEREST TO OTHER JUDGES YES / **NO**

(3) REVISED

DATE 30 August 2023

SIGNATURE:

I
n the matter between:

TAL HASSALL

Applicant

and

FIRSTRAND AUTO RECEIVABLES (RF) LIMITED

Respondent

ORDER

1. The Application for condonation, dated 5 May 2021 is granted, with costs.
 2. The Rescission Application, dated 3 November 2020 is granted, with costs.
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JUDGMENT

- 1 On 28 June 2023, I issued the aforesaid order. These are my reasons.
- 2 On 26 January 2017 the respondent entered into an instalment sale agreement with the applicant. Pursuant to the conclusion of the agreement a dispute arose in respect of the outstanding balance due to the respondent.
- 3 It is common cause that the applicant has been in constant contact with the respondent since July 2018. The applicant gave the respondent notice of the change of his chosen Domicile to 9[...] N[...] Road Norwood, Johannesburg, on the following occasions i.e.: 26 April 2019 and 27 May 2019.
- 4 The respondent was clearly well aware of the change of Domicile when during April 2019, an informal collections agent of the respondent visited the applicant at the aforementioned address.
- 5 On 6 October 2020, the applicant was however advised by the respondent that a court order had been granted against him.
- 6 Consequently, the applicant instituted this application seeking the rescission of such judgment premised upon the following:
 - 6.1 That there was no proper notice to him, and that the summons did not come to his attention; and
 - 6.2 The respondent lacked the necessary *locus standi* to institute and pursue the main action against him.
- 7 As part of such application for rescission the applicant also seeks punitive costs against the respondent.
- 8 In determining the aforesaid issues, I had reference to the terms and conditions of the instalment agreement which provides in clause 18 which states that:

8.1 *"you agree that the postal or email address that you have provided on the quotation cost of credit is the address where we must send or post and other communications to you and that such communications will be binding on you. You agree that the physical address that you have provided on the quotation or cost of credit is the address that you have selected as the address where we must send all legal notices to you"*

8.2 *"you must let us know, in writing, by hand or registered mail, of and changed to either of your addresses or your email address, telephone or cellular phone numbers. If you fail to give notice of a change of address we may use the latest address we have for you."*

9 The respondent disputes that the applicant ever gave proper notice of change of his address, as with the reference to clause 18 *supra* and that such notice was required to be given in writing and by hand or by registered mail.

10 Section 96(2) of the National Credit Act 34 of 2005 however prescribes as follows:

10.1 *"a party to a credit agreement may change the address by delivering to the other party a written notice of the new address by hand, registered mail, or email, if the other party has provided an email address."*

11 During the course of the dispute between the parties, it was common cause that, the applicant was in constant contact with the respondent, via email with the respondent during which correspondence the applicant notified the respondent on at least two occasions, already mentioned *supra*, of the applicant's change of address.

12 The respondent was also aware and acknowledged the applicants change of address when the respondent dispatched collection agents to the applicant's

new address. The respondent does not dispute having knowledge of the respondent's new address.

- 13 The respondent contended that the Sheriff's service of the summons at *34 Oaklands Orchards Johannesburg 2001* was proper. The respondent accordingly state that the summons should not be brought to the subjective attention of the defendant in accordance with Rule 4.
- 14 The respondent further submitted that the *34 Oaklands* address was elected by the applicant at the time when the agreement was concluded between the parties as his chosen *domicile*. The respondent denies that the applicant ever changed is *domicile* address for purposes of the instalment sale agreement.
- 15 The respondent does not recognise the emails sent on 26 April 2019 and 27 May 2019 *supra* to constitute a notice of change of the applicant's *domicile*.
- 16 With that submissions of the respondent, I cannot agree.
- 17 It is trite in our law that a judgement is erroneous where there was no proper notice to the absent party, irrespective of whether or not the judgement or order is otherwise correct. See in this regard *inter alia*: ***Custom Credit Corporation Limited v Bruwer 1969 (4) SA 564 (D)***.
- 18 I am accordingly of the view that the applicant gave proper notice of his change of address within the confines of the National Credit Act *supra* and despite having done so, and notwithstanding such notice having come to the respondent's attention, the respondent erroneously served the summons at the applicant's erstwhile address which caused the summons not coming to the applicant's knowledge.
- 19 Therefore, the summons in the main action was not properly served on the applicant which fact renders the judgement granted by default, to be

rescinded. Consequently, I need not consider the further point of *locus standi*.

- 20 As a result, cost should follow the cause. In circumstances where I could not find any reason why such cost should be on a punitive scale, such costs will be on a party and party scale, for which the order set out hereinabove was issued.

DJ VAN HEERDEN
Acting Judge of the High Court
Gauteng Division, Pretoria