

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER: 18615/2009

DATE: 29 NOVEMBER 2010

In the matter between:

CHANGING TIDES 17 (PTY) LIMITED

Applicant

and

BELINDA-ANN BRUGGE

1st Respondent

JURGEN BRUGGE

2nd Respondent

JUDGMENT

TRAVERSO, D J P

I have considered this application which was brought in terms of Rule 42 for the amendment of a court order. Rule 42 provides that a court may rescind or vary an order or judgment erroneously sought or erroneously granted in the absence of any party effected thereby, or clarify the order where there is any ambiguity or patent error or omission, or an order that the judgment was granted as a mistake common to both parties. In my view this application is ill conceived . The law is trite

If an order is not made in terms whereof an immovable property is specifically declared executable, the creditor is obliged to first execute against the movables of the debtor,

whereafter the creditor will execute against the immovable property of the creditor. This order, the summary judgment order, was granted in December last year. A year later we are still busy with an application to vary the order to give effect to a process which could have been long finalised by now, with or without the incurrance of further legal expense.

There is, in my view, no reason to come to court in those circumstances to apply for a variation of the order when exactly the same result can be achieved by the normal process provided for by the rules of court. The respondent appeared in person today. He is opposing the relief sought. His grounds are, in my view, not sound, but that does not change the fact that in my view the applicant was ill advised in bringing this application. Mr Brugge applied for a postponement. In my view there is no earthly reason why the matter should be postponed, particularly in view of my view that the application cannot succeed.

In the circumstances, THE APPLICATION IS DISMISSED. I

am informed that the applicant's legal representatives are not appearing for any fee today.

Mr Brugge appeared in person, so, therefore, there will simply be no order as to costs.

TRAVERSO, D J P