



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

4/3/14

Case No: 61623/2009

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHERS
JUDGES: YES/NO	
(3)	REVISED
14.3.2014	
DATE	SIGNATURE

In the matter between:

SHEHZAAD ABDUL GHANI

Applicant/ Second Defendant

and

FIRSTRAND BANK LIMITED

Respondent/ Plaintiff

JUDGMENT

JANSE VAN NIEUWENHUIZEN J

[1] This is an unopposed rescission application.

[2] Judgment was granted by default against the applicant on 15 December

2009 for the payment of R 23 910, 87, interest and costs.

- [3] The summons was served at a *domicilium* address and did not come to the attention of the applicant.
- [4] In setting out his *bona fide* defence, the applicant admits that the money was due and owing to the respondent at the time. He explains that due to adverse economic circumstances he was not in a position to pay the amount owing to the respondent.
- [5] Subsequent to the judgment being granted, the applicant repaid the full amount to the respondent and he attaches a letter from the respondent confirming same.
- [6] In his affidavit, the applicant relies on an unreported judgment of Binns-Ward J in the matter of *Theodore Peter Damon and Carla Yolande Damon v Nedcor Bank Limited* delivered in the Cape Division of the High Court as the ground on which rescission should be granted. The facts in the *Damon* matter is on par with the facts herein.

LEGAL PRINCIPLES:

- [7] Rule 31(2)(b) of the Uniform Rules of court is applicable to the facts and circumstances contained in the applicant's application. The rule reads as follows:

*"A defendant may within twenty days after he or she has knowledge of such judgment apply to court upon notice to the plaintiff to set aside such judgment and the court may, upon **good cause shown**, set aside the default judgment on such terms as to it seems meet."*

- [8] The requirements pertaining to "*good cause shown*" have been established in a long line of decisions, which I, for present purposes, do not intent citing. An applicant in a rescission application in terms of the rule is, *inter alia*, required to set out a *bona fide* defence to the claim of the plaintiff in the main action. The applicant, on his own version, does not have a *bona fide* defence to the plaintiff's claim.
- [9] The applicant in an attempt to cure this problem relies on the *Damon* judgment referred to *supra*.
- [10] In the *Damos* matter, Bins-Ward J, with reference to the National Credit Act, 34 of 2005, held as follows at para [14]:

"Part D of chapter 4 of the Act provides for a system of assisted debt management or debt re-arrangement for persons who, like the applicants in this case did, encounter difficulty in meeting their obligations in terms of credit agreements. (A mortgage contract is expressly included within the meaning of 'credit agreement' under the Act.) A person subject to a debt re-arrangement becomes entitled to the issue of a clearance certificate once her or she has

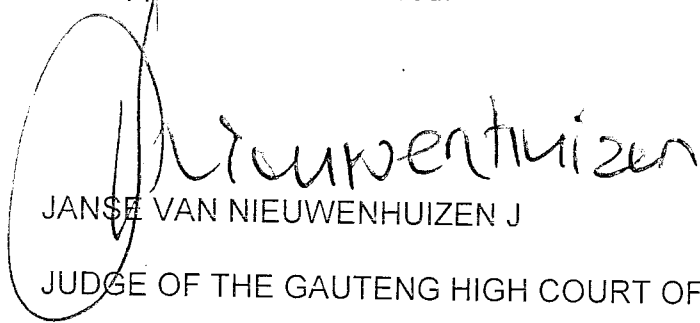
discharged the outstanding financial obligations which are subject to the debt re-arrangement. The issue of such a clearance certificate entitles the credit receiver to the expungement of the affected transactions in respect of which he or she had been in default of his or her contractual obligations from the credit records maintained by registered credit bureaux. In the event of a credit bureaux failing or refusing to expunge the record, the credit receiver is afforded remedies under the Act to address such failure or refusal without it being necessary to approach a court."

- [6] In view of the fact that the provisions of the Act referred to *supra*, were not available to the applicants in the *Damon* matter, Binns-Ward J granted an order rescinding the default judgment. He, however, made it clear that applicants should in future utilise the provisions of the National Credit Act.
- [7] The National Credit Act commenced on 1 June 2006 and the remedies contained therein are available to the applicant.
- [8] As stated *supra*, the facts contained in the applicant's founding affidavit does not satisfy the requirements of rule 31(2)(b) and the application cannot succeed.

ORDER

I make the following order:

The application is dismissed.

A handwritten signature in black ink, appearing to read 'Janse van Nieuwenhuizen', is written over a circular stamp. The signature is fluid and cursive, with the first letter 'J' being particularly large and stylized.

JANSE VAN NIEUWENHUIZEN J

JUDGE OF THE GAUTENG HIGH COURT OF SOUTH-AFRICA