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IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Case number: 4867/2017

In the matter between:

OSCAR NITE (PTY) LTD

Applicant

[Registration number: [.....]] and

**THE STANDARD BANK OF SOUTH
AFRICA LTD**

1st Respondent

THABANG AZAEL MOTLOI N.O.

2nd Respondent

NKGESA KENNETH RATLABALA N.O.

3rd Respondent

THE SHERIFF, BLOEMFONTEIN WEST

4th Respondent

HEARD ON: 22 FEBRUARY 2018

JUDGMENT BY: MOLITSOANE, AJ

DELIVERED ON: 8 MARCH 2018

[1] The applicant seeks an order in terms of which the attachment of its bank account held at the First Respondent is declared incomplete, irregular,

unlawful, null and void and/or of no legal force. The Applicant further seeks an order to set aside the said attachment. This application is opposed by the second and third respondents.

BACKGROUND FACTS

- [2] On the 20th September 2016 the second and third respondents obtained default judgment against the Applicant for payment of R178 538-11 and other ancillary relief.
- [3] On the 12th December 2016 the second and third respondents caused a writ of execution to be issued followed by a notice in terms of Uniform Rule 45(12)(a).
- [4] On the 15th December 2016 the sheriff of this court served the writ of execution on the 1st respondent and thereby proceeded to attach the bank account of the Applicant held by the first respondent. There were no funds available in applicant's bank account and a *caveat* was registered against the applicant's account.
- [5] On the 23rd January 2017 the sheriff purported to serve the notice in terms of Uniform Rule 45(12)(a) and the writ of execution on the respondent.
- [6] It is this attachment of the 15th December 2016 which the Applicant seeks to nullify.

SUBMISSIONS BY COUNSEL

- [7] At the onset it needs to be mentioned that the Applicant did not file any replying affidavit nor did the applicant file any heads of argument. The applicant in the morning of the application requested the matter to be postponed and the application was strenuously opposed by counsel for the second and third Applicant. I refused the application for a remand and I gave my reasons *extempore*. I felt that it was in the interest of justice that I should proceed with this matter in spite of the fact that no heads of argument were filed by the applicant.
- [8] Counsel for the Applicant submitted that the writ of execution and the Uniform rule notice 45(12)(a) were not served on the respondent. In this regard, so the argument goes, compliance with uniform rule 45(8)(c) was a

sine qua non for the operation of Rule 45(12)(a).

- [9] It was submitted further on behalf of the Applicant that upon proper construction of Rule 45(12)(a), the funds that were to be attached were funds that were held in Applicant's account at the time of the execution process. It was thus contended on behalf of the Applicant that Uniform Rule 45(12)(a) did not cover future payments to be made to the first respondent.
- [10] On the other hand, it was submitted on behalf of the second and third respondents that both the writ of execution and the notice in terms of Rule 45(12)(a) were served at the registered address of the applicant, as well as on the first respondent.
- [11] It was submitted further on behalf of the second and third respondents that that future payments into the applicant's bank account, after attachment, are in fact "debts accruing" by the 1st respondent to the Applicant as envisaged in Rule 45(12)(a) and were thus liable to attachment.

ISSUES FOR DETERMINATION

- [12] The first issue for determination is whether the writ of execution of Uniform Rule 45(12)(c) was served on the Applicant.
- [13] The second issue for determination is whether the attachment of the bank account extends to future payments standing to the credit of the Applicant.

APPLICABLE LAW

- [14] Uniform Rule 45(8) makes provision for the attachment of incorporeal property. The relationship between a banking institution and its customer whose account with it is in credit is that of a debtor and creditor. The customer makes deposits to the credit of his account with the bank, and the "transaction is not one of *depositum*, but of loan without interest". - See **Ormerod v Deputy Sheriff, Durban** 1965 (4) SA 670 (D & CLD) at 673 par D-E.
- [15] Rule 45(8)(c) indicates that where an attachment is made a notice of attachment must be given to the judgment debtor.
- [16] Uniform Rule 45(12)(a) provides as follows:
 - "(12) (a) Whenever it is brought to the knowledge of the sheriff that there are

debts which are subject to attachment, and are owing or accruing from a third person to the judgment debtor, the sheriff may, if requested thereto by the judgment creditor, attach the same, and thereupon shall serve a notice on such third person, hereinafter called the garnishee, requiring payment by him to the sheriff of so much of the debt as may be sufficient to satisfy the writ, and the sheriff may, upon any such payment, give a receipt to the garnishee which shall be a discharge, *pro tanto*, of the debt attached."

- [17] What an 'accruing debt' is, has been explained as follows in **Honey v Blanckenberg v Law** 1966 (2) SA 43 at 48A-B:

"An accruing debt is therefore a debt not yet actually payable but a debt which is represented by an existing obligation."

APPLICATION OF THE LAW TO THE FACTS

- [18] Uniform Rule 8(1)(i) provides that an attachment will only be complete once the sheriff had complied with the provisions of this sub rule. An attachment of a right, title and interest of judgment debtor will only be complete once the sheriff has given notice of the attachment in writing to all interested parties. In this case Applicant being the holder of the account is an interested party.
- [19] It is not disputed that on the 15th December 2016 the sheriff of this court effected service of the writ and a notice in terms of Uniform Rule 45(12)(c) on the first respondent. Thereafter the same documents were served at the address 22 Memveille, Reiveille Crescent, General De Wet, Bloemfontein. Such a service was effected on the registered address of the Applicant as evident from the CIPC search report as annexed as Annexure C to the opposing affidavit. Respondent did not file a replying affidavit and thus did not dispute that this address was not its address.
- [20] Rule 45(8)(c) does not oblige service to be effected personally. It would in any case be impossible to do so in view of the juristic personality of the Applicant. According to the sheriff, service was indeed effected in terms of Rule 4(1)(a)(v). I am satisfied that the service effected herein was proper and was effected in terms of the rules. This point raised by the Applicant stands to be dismissed.

[21] Not only does Rule 45(12)(a) of the rules empower sheriff to attach debts owing but it is clear that the sheriff may also attach accruing debts. It is therefore, not correct that Rule 45(12)(c) is limited to the funds held by the first respondent at the time of the execution of the process.

[22] It is my considered view that the attachment of the incorporeal property extends to future or accruing debts.

[23] In the premises I make the following order:

ORDER

[24] The Application is dismissed with costs.

P.E. MOLITSOANE, AJ

On behalf of applicant:

Ms A Belot

Instructed by:

AP Belot Attorneys

Bloemfontein

On behalf of 2nd & 3rd respondents:

Adv Groenewald

Instructed by:

Van der Berg Van Vuuren

Attorneys

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