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

Reportable:	**YES/NO**
Of Interest to other Judges:	**YES/NO**
Circulate to Magistrates:	**YES/NO**

Case No: 5003/2016

In the application between:

FIRSTRAND BANK LIMITED Plaintiff

and

ANNETTE SLABBERT Defendant

JUDGMENT BY: C REINDERS, J

HEARD ON: 9 FEBRUARY 2017

DELIVERED ON: 16 FEBRUARY 2017

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[1] The Plaintiff, Firstrand Bank Limited ("Firstrand") issued summons against the Defendant, Mrs Annette Slabbert ("Mrs Slabbert") on 20 October 2016 for *inter alia* payment in the amount of R 443 883,72 and

an order declaring an immovable property known as Erf [1...], Bloemfontein executable. After a notice of intention to defend was filed by Mrs Slabbert, Firstrand moved for summary judgment against her.

[2] It is common cause that four written home loan agreements were concluded between Firstrand and Mrs Slabbert on various dates ranging from 2004 to 2012 pursuant thereto, four mortgage bonds were registered in favour of Firstrand. According to Firstrand the terms and conditions of these loan agreements were breached by the failure of Mrs Slabbert to pay the monthly instalment due, as a result whereof the amounts became due and payable.

[3] Mrs Slabbert opposes the application on several grounds, averring that she has a *bona fide* defence against Firstrand. She explains the reason for falling behind with the monthly instalment and states that she applied for business rescue. The instalment on the property had always been paid for from her spouse's account. Firstrand cancelled the debit order or Mr Slabberts account, resulting in her falling in arrears unbeknown to her.

[4] On 3 October 2016 Mrs Slabbert received an email from Firstrand, indicating that the last payment received was on 11 June 2016 and the account was in arrears in the amount of R 25 948,18. The following day she receive a notice in terms of sec 129(1) of the National Credit Act 34 of 2005 (the "NCA") indicating her default in respect of in the said amount.

[5] Mrs Slabbert paid an amount of R 26 000,00 on 28 October 2016 and annexes proof of such payment. She avers that papers were being processed to have the plaintiff included in the debt review. Her affidavit

was attested to on 6 December 2016. She avers that some payment has also been made through the National Payment Distribution Agency to effect payment to various creditors and an amount of R 3 985,22 was as paid to Firstrand.

[6] The defences further advanced by Mrs Slabbert are *inter alia* in respect of compliance (or non-compliance) by Firstrand with sections 129(1)(a), 129(2), 129(3) and 129(4) of the NCA. I do have my concerns whether the defendant has a *bona fide* defence which is good in law. The notice of intention to defend was filed on 27 October 2016 and payment made two days thereafter. The summons was issued and quantified before these payments were made.

[7] For purposes hereof the Defendant does not have to proof her defence and I have to assume the correctness thereof at this stage. Assuming the correctness thereof, the claimed amount cannot be correct. By averring the payment of the R 26 000,00 Mrs Slabbert's averment tantamounts to payment of the arrears albeit late. Without detracting from my concerns stated above regarding the defence being good in law, I am not convinced that Firstrand has an unanswerable case at this stage. The defendant has supplied me with sufficient information to convince me to exercise my discretion in her favour.

[8] Accordingly the following order will issue:

1. The application for summary judgment is dismissed.
2. Leave is granted to the Defendant to defend the action.
3. Costs is to be in the cause.

C. REINDERS, J

On behalf of the Plaintiff:	Adv. J. Els Instructed by: Rossouws Attorneys BLOEMFONTEIN
On behalf of the Defendant:	Adv. L. Collins Instructed by: Jordaan Rijkheer & Partners Attorneys BLOEMFONTEIN