IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

06/02/2015.

CASE NUMBER: 54386/2014

(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED.

6/2/2015
DATE

SIGNATURE

In the matter between:

INTEGER MORTGAGE SPV (PTY) LIMITED	**APPLICANT**
and	
RAYMOND CHIMHANDAMBA	**FIRST RESPONDENT**
NANCY CHIMHANDAMBA	**SECOND RESPONDENT**

J U D G M E N T

<u>CORAM:</u> PRETORIUS J,

1. This is an application for summary judgment for the payment of a debt and for an order declaring property specially executable.

2. According to the defendants they have a *bona fide* defence as they had not acted intentionally or negligently.

3. The defendants were under debt review and admit defaulting on the payments in terms of the debt review arrangement, as the first defendant had lost his employment. It is common cause that the debt review was cancelled as a result of the failure by the defendants to adhere to the terms of the debt review. Both the first and second defendants are currently employed and are of the opinion that debt review should be resumed. The National Credit Act 34 of 2005 has the purpose as set out in section 3(1):

   "To promote and advance the social and economic welfare of South Africans, promote a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market and industry, and to protect consumers….."

4. In **FirstRand Bank Ltd v Adams & Another 2012 (4) SA (WCC) 14** Davis J held at paragraph 6: " *In short, the Act seeks to ensure the obligations which have been incurred by consumers are discharged to the satisfaction of the credit provider, but in circumstances where the interests of the consumer are considered; hence, instead of the consumer such as in the present case losing their key asset, a restructuring mechanism is established and can be utilised to achieve a necessary balance between the competing interests of consumer and credit provider."*

Factual background

5. The plaintiff granted a mortgage bond of R1 830 000.00 to the defendants. The instalments are R22791.43 per month. The first and second respondents breached their obligations and as at 9 June 2014 were in arrears in the sum of R231 562.00.

6. In his affavit the first defendant submitted that:

   "We have since made an offer and undertaking to the Applicant that we will liquidate the arrears and bring to date all the arrears in within a period of 18-24 months using our bonuses and extra income earned from my other business"

7. This offer was that the defendants would pay R14 000 per month for 3 months and thereater R17 000 per month. This would mean that the arrears would accumulate once again as the payments would only be for the current arrears and no payments on the instalments would be made, resulting in further arrears. The only proof of the current financial position of the defendants is the employment contract of the first defendant which is referred to and annexed to the opposing affidavit. There is no information as to his income from his other business and as to which amount could be paid from bonuses and extra income.

8. I realise the court can resume a debt review in terms of section 86 (11), but then the defendants have to justify their request by giving adequate information to enable the court to make an informed decision.

9. In **Changing tides 17(Pty) Ltd v Scholtz [2010] JOL 25358 WCC** the court mentioned a list of what should be expected from a defendant requesting the resumption of a debt review.

10. In this present matter there is no indication of the full income of both defendants, their liabilities, their commitments in respect of such liabilities, whether they have dependants and if so, what their living expenses are. There is no confirmatory affidavit by the debt counsellor or any proposal by the debt counsellor as to the re-arrangement of debt.

11. I cannot, under these circumstances, find that there are good grounds to exercise my discretion in terms of section 86(11) and to order a resumption of debt review. It is so that the property is the primary residence of the defendants, but that alone cannot justify the resumption of the debt review.

12. Due to the paucity of information the court cannot find that there is a prospect of success. I have considered all the evidence and come to the conclusion that summary judgment should be granted in this instance, due to the fact that I cannot find that debt review in terms of section 86(11) of the National Credit Act should resume. The defendants admitted that they owe the arrears and could not provide a *bona fide* defence.

Therefor summary judgment is granted as follows:

1. Summary judgment is granted agaist the first and second defendants jointly and severally, the one to pay the other to be absolved.

2. Payment in the sum of R 1 818 931.34(One million eight hundred and eihteenthousand and nine hundred and thirty one Rand and thirty four cents) in respect of the defendants' indebtedness arising from the loan agreement;

3. Interest on the aforesaid sum at a rate of 7.50% from 01June 2014 to date of payment, both days inclusive;

4. Declaring ERF 438 DOUGLASDALE EXTENSION 25 TOWNSHIP, REGISTRATION DIVISION I.Q. PROVINCE OF GAUTENG, IN EXTENT 1513 (ONE THOUSAND FIVE HUNDRED AND THIRTEEN) SQUARE METERS, HELD BY DEED OF TRANSFER T54882/2004, immediately executable;

5. Costs of suit on the scale of attorney and client.

PRETORIUS J

JUDGE OF THE HIGH COURT

Representation for the Applicant:

Counsel	M JACOBS
Instructed by	KATANYA CHETTY ATTORNEYS c/o NASIMA KHAN INCORPORATED

Representation for Respondents:

Counsel	R MARé
Instructed by:	PAUL FARINHA ATTORNEYS