

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

Case No.: 5432/2011

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA LTD
t/a STANDARD BANK VEHICLE AND ASSET FINANCE

Plaintiff

and

DAVID DU RANDT

Defendant

HEARD ON: 11 FEBRUARY 2014

JUDGMENT BY: MOTLOUNG, AJ

DELIVERED ON: 6 MARCH 2014

- [1] This is an application for default judgment by the plaintiff against the defendant. The defendant's attorney claims full compliance with Rule 16(4) of the Uniform Rules of Court.
- [2] The plaintiff is the Standard Bank of South Africa t/a Standard Vehicle & Asset Finance with registered address at 6 Simmonds Street, Johannesburg and the defendant is David du Randt, a major male whose chosen *domicilium citandi et executandi* is Plot 59C, Du Randt Avenue, Eden Staffords Hills, Bethlehem, Free State.
- [3] The plaintiff issued summons against the defendant on 13 December 2011 for breach of contract, alternatively cancellation thereof and payment of the full outstanding amount of R678 418.21 together with interest. The plaintiff prayed for the costs of suit.

- [4] Counsel for plaintiff argued that the defendant filed a notice to defend on 9 July 2012. An application for summary judgment was made on 12 July 2012, which application was dismissed. The defendant filed his plea on 18 January 2013. The matter was duly set down on 27 January 2013 for trial on 11, 12 and 14 February 2014. In defence of his case defendant was represented by W.J. Botha of Botha Hefer Attorneys Inc., 60B Kellner Street, Bloemfontein.
- [5] On 27 January 2014 a pre-trial conference was held by the parties and the defendant was represented by his attorney. No issues were raised about lack of instructions.
- [6] On 3 February 2014 the defendant's attorney of record caused to be sent a letter to plaintiff wherein he indicates that they may withdraw as attorneys of record on the basis of lack of further instructions and funds.
- [7] On 5 February 2014 a notice of withdrawal was served on all the parties that the defendant's representative will no longer act for defendant. A copy of the registered mail to the defendant at his postal address was also attached and it was also evenly dated.
- [8] At issue is whether upon compliance by the defendant's attorney with Rule 16(4) of the Uniform Rules of Court the plaintiff can enforce this Rule. The Rule provides that:

“16(4)

- (a) Where an attorney acting in any proceedings for a party ceases so to act, he shall forthwith deliver notice thereof to such party, the registrar and all the parties: Provided that notice to the party for whom he acted may be given by registered post.
- (b) After such notice, unless the party formerly represented within 10 days after the notice, himself notifies all other parties of a new address for service as contemplated in subrule (2), it shall not be

necessary to serve any documents upon such party unless the court otherwise orders: Provided that any of the other parties may before receipt of the notice of his new address for service of documents, serve any documents upon the party who was formerly represented.”

- [9] The plaintiff’s counsel submits that there has been compliance with the Rule above and as such they are entitled to a default judgment in the matter.
- [10] In making this judgment I am mindful of the decision in **Sentraal Westelike Ko-operatiewe Maatskappy Bpk v Prinsloo** 1972 (2) SA 86 (O), where Erasmus J granted default judgment and accepted that the Rule was not fully complied with but for all practical purposes, the defendant had not be prejudiced by the procedure which had been followed.
- [11] There are two problem issues I have in respect of compliance with the Rule. Firstly, the defendant has 10 days in which to notify the plaintiff about change of address. From the papers it is evident that the matter was set-down with the knowledge of the defendant and this is not in dispute. However, the notice of withdrawal, which I must admit complies with the Rules, was only made on 5 February 2014. Given that the date of hearing was to start on 11 February 2014, this leaves less than 5 days and such short notice would be prejudicial to the defendant.
- [12] Secondly, it seems that the plaintiff cannot act in terms of this subrule unless he can show that the registered mail was received by the defendant timeously. This would suggest that the plaintiff acts prematurely where it has not been established that the withdrawal was received by the defendant and he chose not to react on it.
- [13] This brings us to the issue where the plaintiff is entitled in terms of this Rule to approach the court to order that service be effected in a manner directed by the court. This Rule generally relates to matters of status where personal service is important. Nonetheless it is important for the plaintiff to comply with the *dies* in

the Rule to remove any doubt as to whether the defendant as a matter of fact does not wish to appoint another legal representative.

[14] In the circumstances, I cannot grant default judgment in this matter on the basis of non-compliance with Rule 16(4)(b) of the Uniform Rules of Court.

[15] At this stage the following orders only will issue:

1. The application for default judgment is dismissed.
2. The plaintiff may set the matter down on the unopposed roll, without any notification to the defendant, should defendant not have notified plaintiff of the appointment of his new legal representative.
3. The wasted costs of this application for default judgment shall be paid by the defendant.

S.E. MOTLOUNG, AJ

On behalf of plaintiff:

Adv L.W. de Beer
Instructed by:
Symington & De Kok
BLOEMFONTEIN

On behalf of defendant:

No appearance on behalf of defendant

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