

REPUBLIC OF SOUTH AFRICA



IN THE NORTH GAUTENG HIGH COURT
PRETORIA

CASE NO: 23625/2012

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED.
4/12/2013	
DATE	SIGNATURE

4/12/2013

In the matter between:

BRIDGEWAY (PTY) LTD

Applicant

and

ISSACS I A

Respondent

J U D G M E N T

MASIPA J:

INTRODUCTION

[1] The applicant sought an order declaring immovable property of the respondent specifically executable as well as for an order for sale in execution of immovable property. The application was brought in terms of Rule 46 (1) of the Uniform Rules of Court. The application is opposed and the respondent filed an opposing affidavit.

[2] The application was a sequel to a judgment of this court granted against the respondent, by default, on 6 July 2012. The respondent had defaulted on a payment in terms of an agreement between the parties in terms of which the applicant provided the respondent with bridging finance.

THE GROUNDS OF OPPOSITION

[3] Defences raised by the respondent were briefly that this Court did not have jurisdiction to grant the judgment as the amount claimed fell within the jurisdiction of the magistrates' court and that certain monies are with SARS and a conveyancing attorney would be required to release them.

[4] The contention by the respondent regarding jurisdiction is unfounded. In terms of Section 19 of the Supreme Court Act 59 of 1959 this Court shall have the following jurisdiction:

"Section (19) (1) (a): A provincial or local division shall have jurisdiction over all persons residing and being in and in relation to all causes arising and all offences

triable within its area of jurisdiction and all other matters of which it may according to law take cognizance, and shall..."

There is no basis, therefore, for the contention that the court which granted the order lacked jurisdiction.

[5] The respondent's attempt to raise as a defence the issues of monies which are allegedly with SARS is no defence in these proceedings. There is no basis why the respondent has not collected the said monies from SARS. There is also no basis why the applicant should wait until such monies are retrieved.

SUBMISSIONS

[6] Counsel for the applicant submitted that the duty to satisfy the judgment remained with the respondent. The respondent had taken no steps at all to satisfy the judgment or rescind it if she saw the need for such a step. This meant that the respondent had no defence at all. The applicant therefore, was entitled to the order it was seeking.

[7] The respondent, who appeared in person, confirmed her defence as set out in the papers. In addition she sought to argue that the judgment against her should not have been taken because of what she referred to as defects in the application that led to the judgment of 6 July 2012. In support of her submissions she sought to hand up a number of documents from the bar. Counsel for the applicant correctly objected and submitted that such conduct amounted to trial by ambush as the applicant had no opportunity to study the documents and properly prepare an answer. This

objection was sustained. There is another reason why the handing up of the documents in these proceedings is not proper, and it is this:

[8] A formidable amount of time and the documents sought to be introduced was used to try and demonstrate that the judgment against the respondent was fraudulently taken. However, it is significant that not once did the respondent say a word about why she has not tried to rescind the judgment although at one stage she had hinted to an intention to do do.

[9] Pointing out to weaknesses of a case where judgment or order has already been granted will not avail a respondent. A judgment or order, no matter how it was obtained, stands until it is set aside by a competent court of law. The judgment of 6 July 2012 stands and it is on its basis that this application was brought. The respondent's argument should be in respect of the present application not in respect of the judgment that led to this application.

[10] The respondent has not raised a defence that the properties sought to be declared are her primary residences. On the contrary, in an attempt to show that she never received notice of the proceedings against her, she stated that had service been properly effected her tenants would have informed her that a summons had been issued against her. This in my view is a strong indication that she does not reside on any of those properties.

[11] The respondent has also not raised any payment in an attempt to satisfy the debt. Lastly there is no allegation of a pending rescission application before this court. There is therefore no defence to the application before me.

[12] Having carefully considered argument by counsel for the applicant and by the respondent I have been persuaded that a case has been made out for the relief that is sought.

[13] In the result I grant the following order in favour of the applicant:

1. The immovable properties of the respondent more fully described as:

1.1 The Respondent's half share in Erf 788, Zwartkop Ext 4, City of Tshwane, situated at No 11 Blinkbaar Street, Zwartkop Ext 4, held by Deed of Transfer No. T 142637/2006; and

1.2 Remaining Extent of Erf 1481, Bezuidenhout Valley, Johannesburg, situated at No. 163 1st Avenue, Bezuidenhout Valley, held by Deed of Transfer No. 60737/2006; and

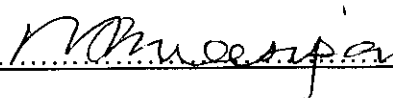
1.3 Section No. 170 as shown and more fully described on Sectional Plan No. SS 41/1989 in the scheme known as Vista in respect of land and building or buildings situated at No. 1 Rantkant Crescent, Verwoedburgstad, and held by Deed of Transfer No. ST 37250/2005; and

1.4 The Respondent's half share in Section No. 148 as shown and more fully described on Sectional Plan No. SS 41/1989 in the scheme known as Vista in respect of land and building or buildings situated at No. 1 Rantkant Crescent, Verwoedburgstad , and held by Deed of Transfer No. ST 37250/2005; (collectively referred to as "the immovable properties"), subject to the conditions therein contained, is declared executable as provided for in Rule 46 of the Rules of Court;

2. Execution against the immovable properties, as provided for in Rule 46 (1) (a) (ii);

3. The word "BETTERBRIDGE (PTY) LTD", as set out on the face of the summons is deleted and substituted with the words "BRIDGEWAY (PTY) LTD", so as to accord with the pleadings.

4. The respondent is ordered to pay costs of suit on an attorney and client scale.


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TM MASIPA

JUDGE OF THE NORTH GAUTENG

HIGH COURT

Counsel for the applicant: Z Schoeman

Instructed by: Neil Esterhuysen & Associates Inc

For the respondent: She appeared personally.

Date of Hearing: 22/11/2013

Date of Judgment: ~~28/11/2013~~ 4/12/13