

NOT REPORTABLE

IN THE HIGH COURT OF THE REPUBLIC OF SOUTH AFRICA

NORTH GAUTENG, PRETORIA

Case number: 24032/10

Date:07/06/2012

In the matter of:

WESSEL WANNENBURG

Applicant

vs

THE STANDARD BANK OF SOUTH AFRICA LTD

Respondent

JUDGMENT

BAM AJ

1. Summons was issued against the applicant on 26 April 2010. On 3 May 2010 service was affected by the Sheriff by affixing a copy of the summons to the main entrance at the applicant's domicilium citandi et executandi. On 6 July 2010 default judgment was granted by this Court against the applicant in favor of the respondent for the return of a motor vehicle. The vehicle was attached by the Sheriff, and is currently, apparently since 7 April 2011, in possession of the respondent. The applicant now applies for rescission of the said judgment. The application is opposed by the respondent.

2. To be successful in an application for the rescission of a judgment the applicant has to furnish a reasonable explanation for his default. The default should not be due to willfulness or gross negligence of the applicant, the application must be bona fide. It must further be shown that the applicant has a bona fide and prima facie defense to the plaintiff's claim.

3. The summons in this matter was served at the applicant's domicillium address. It is however averred by the applicant that he only became aware of the judgment when he was notified by the Sheriff two days prior to the attachment of the vehicle. According to the applicant he was under debt review at that stage, since January 2010, and that his attorney communicated that to an employee of the respondent. An arrangement was allegedly made according to which the applicant had to forward proof of his debt review to the respondent to affect the release of the vehicle. Nothing happened on-towards. The applicant averred that this situation delayed the application for the rescission of the judgment.

This averment is vague. It is not explained by the applicant how precisely the said situation affected the lodging of this application. The applicant's further explanation that he contacted his debt counselor and that the debt counselor in turn contacted the applicant's attorney, is likewise vague. The applicant does not explain what documents had to be requested from the respondent's attorneys.

4. After having perused the documents regarding the default judgment, I requested counsel for the applicant, Ms Myburgh, and counsel for the respondent, Mr de Beer, to address what appeared to have been an irregularity in those proceedings. It appeared that the notice in terms of section 86 (of the National Credit Act), was incorrectly and irregularly sent to the applicant. Counsel assured me that the correct procedure was indeed followed. This assurance by counsel laid the problem to rest.

5. The applicant's defense is technical by nature. He averred that he was under debt review at the time the default judgment was granted. The applicant's application for debt review was allegedly submitted to the respondent on 9 February 2010. Subsequently, according to the applicant, a court application was prepared by his former attorneys. The matter was attended

to by a Mr Zimmerman. Apparently the application was not properly attended to until the 5th April 2011, when the applicant's present attorneys filed an application for debt review at the Magistrate's office, Benoni. It remained unexplained by the applicant what was done by him pertaining to the debt review during the time span of more than one year.

6. On 19 January 2010, the respondent terminated the initial debt review process in terms of section 86(10) of the NCA. This notice was sent by registered post to the same address where the summons was served on the applicant, namely 12 Deo Villa, Viljoen Street, Secunda. The applicant did not dispute that he had received the said notice. It therefore seems strange that the applicant did not receive the summons that was affixed by the Sheriff to the main door of his residence on 3 May 2010.

7. The applicant's defense based on the alleged debt review is, in my opinion, not convincing at all and does not seem to be bona fide.

8. Accordingly the application is dismissed with costs.

A J Bam

Acting Judge 5 June 2012