

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No.: 2053/2002

In the case between:

SHACKLETON CREDIT MANAGEMENT
(PTY) LTD

Applicant

and

ANTHANOSOPOULOUS, DIONISIOS

Respondent

JUDGEMENT: H.M. MUSI, JP

HEARD ON: 22 APRIL 2010

DELIVERED ON: 29 APRIL 2010

- [1] This matter came before me as an unopposed application in the Motion Court on 22 April 2010. The applicant sues on the basis of a cession in terms of which Nedbank ceded its right, title and interest in and to Nedbank's book debt to the applicant. The book debt included the judgment amount and costs awarded by this Court to Nedbank against the respondent under case number 2053/2002 on 10 July 2002. The applicant seeks the following orders:

“1. That the following property owned by the Respondent be declared specifically executable:

1.1 Scheme Name Villa Toledo, scheme number 441, Unit 47, Gauteng, in extent 59 square meters and situated at 2 Maglies View, Gauteng, held under title deed number ST1353/2008;

1.2 Scheme Name Villa Toledo, scheme number 441, Unit 29, Gauteng, in extent 60 square meters and situated at 2 Maglies View, Gauteng, held under title deed number ST48868/2007.

2. Costs of the application only in the event that same is opposed by the Respondent.”

[2] I was not satisfied that it was competent to grant the order sought and I postponed the matter in order that I could have time to closely look at it with reference to authority. I directed that counsel for the applicant could see me in chambers on Monday the 26 April 2010. Mr Hefer duly appeared and I raised with him the issues that concerned me in this matter.

[3] The first issue was whether this court has jurisdiction in the matter given that all the parties involved are outside the jurisdiction of this court and the cause of action does not

seem to have arisen within this court's jurisdiction. Furthermore, the property sought to be declared executable is outside the area of jurisdiction of this court. Mr Hefer referred me to the decision in **IVORAL PROPERTIES (PTY) LTD v SHERIFF, CAPE TOWN, AND OTHERS** 2005 (6) SA 96 (CPD), where it was held that the High Court is competent to declare specially executable property situate outside its area of jurisdiction but within the borders of the Republic of South Africa. Moreover, the judgment upon which the application is founded is that of this court. This disposes of my query as to jurisdiction.

- [4] The second issue is whether the applicant can be granted the orders it seeks when it was not the plaintiff in the case and judgment it relies upon. Put otherwise, is a cessionary entitled to enforce a judgment ceded to it in its name? Can it sue out a writ in its name without further ado? Both Mr Hefer and counsel who appeared before me in the Motion Court submitted that the answer is in the affirmative, that the cessionary automatically takes the place of the cedent in the judgment. However, counsel cited no authority.

[5] The submission made above by counsel is not borne out by authority. The issue is discussed in **HERBSTEIN & VAN WINSEN, The Civil Practice of the High Courts of South Africa**, 5th edition by Cilliers, Loots and Nel at 1024 to 1025. The authors cite authority to the effect that a cessionary cannot sue out a writ in his/her/its name. He/she/it must first apply to court to be substituted for the cedent in the judgment. Alternatively, the cessionary can proceed in the name of the cedent. The applicant has taken none of the two steps.

[6] In the premises, the application is dismissed.

H. M. MUSI, JP

On behalf of applicant:

Adv. J. J. F. Hefer
Instructed by:
McIntyre & Van der Post
BLOEMFONTEIN

On behalf of respondent:

Unopposed

/em