IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case number: 2023/B 6162

Date of hearing: 31 May 2024

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHERS JUDGES: YES/~~NO~~
(3) REVISED

7/8/24 [redacted]
DATE SIGNATURE

In the matter of:

THE STANDARD BANK OF SOUTH AFRICA LTD **Applicant**

and

AYTON GREGORY LOUW **Respondent**

REASONS FOR ORDER

SWANEPOEL J:

[1] This matter came before me in the unopposed motion court. Applicant sought a monetary judgment pursuant to the respondent's alleged breach of a credit agreement, and an order declaring an immovable property specially executable in terms of rule 46 A.

[2] The applicant had attached to its particulars of claim a notice in terms of section 129 (1) of the National Credit Act, 34 of 2005 ("the Act").

[3] Section 129 (1) of the Act reads as follows:

> "If the consumer is in default under a credit agreement, the credit provider-
>
> (a) may draw the default to the notice of the consumer in writing and propose that the consumer refer the credit agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent that the parties resolve any dispute under the agreement or develop and agree on a plan to bring the payments under the agreement up to date; and
>
> (b) subject to section 130 (2), may not commence any legal proceedings to enforce the agreement before-
>
> (i) first providing notice to the consumer as contemplated in paragraph (a), or in section 86 (10) as the case may be; and ......"

[4] The delivery of a section 129 notice (as it has become known) is a jurisdictional requirement to the issuing of a summons to enforce a credit agreement, and the applicant was not entitled to issue the summons before having complied with the requirements of section 129 (1). It has become practice to dispatch section 129 notices to the debtor's domicile address by registered mail, and service is then proven by way of a proof of registration, together with a track and trace report. If the track and trace report reveals that the registered letter was received at the post office nearest to the consumer's domicile address, delivery thereof at the domicile address is then presumed.

[5] The Loan agreement entered into by the parties recorded in Part A thereof that the respondent's domicilium citandi et executandi is a physical address in Eldorado Park, as did the mortgage bond. Clause 21.1 of the loan agreement says:

> "You choose, as the address for serving legal notices in terms of this agreement ("notice address"), your address set out in Part A, to which these terms and conditions are attached."

[5] The plaintiff dispatched the section 129 notice by electronic registered mail to an email address, and not to the physical domicile address. It did so, apparently, pursuant to section 19 (4) of the Electronic Communications and Transactions Act, 25 of 2002. Act which reads:

> "Where any law requires or permits a person to send a document or information by registered post or similar service, that requirement is met if an electronic copy of the document or information is sent to the South African Post Office Limited, is registered by the said Post Office and sent by that Post Office to the electronic address provided by the sender."

[6] The abovementioned subsection does not permit for the substitution of domicile addresses. It simply allows for the electronic dispatch of a document through the Post Office where the document is required to be sent by registered mail to an email address.

[7] In *Shepard v Emmerich*[1] a Full Court of this Division considered an appeal against the recission of a judgment on the grounds that the summons had not been served in accordance with the contractually agreed domicile clause. The Court said:

> "The learned judge a quo considered the issue to be novel and . . . . concluded that where a specific method of effecting service is contractually agreed, that method should be strictly complied with. The

[1] 2015 (3) SA 309 (GJ)

authorities relied on by the learned judge are persuasive and I am in agreement with the conclusion he arrived at."

[8] The parties did not agree, in this case, that legal notices could be served at an email address. The section 129 notice was therefore not delivered to the domicile address, and consequently I refused to grant judgment. I made an order that the notice in terms of section 129 of the National Credit Act, 34 of 2005 must be served at the agreed domicile address before the matter was re-enrolled.

[redacted]

SWANEPOEL J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION ,PRETORIA

Counsel for the applicant:	**Adv. Sihawu**
Instructed by:	**Velile Tinto & Associates**
Date heard:	**31 May 2024**
Date of reasons:	**5 August 2024**