

DELETE WHICHEVER IS IN THE NORTH GAUTENG HIGH COURT

(1) REPORTABLE: YES/NO.

(PRETORIA)

(2) OF INTEREST TO OTHER JUDGES: YES/NO.

(3) REVISED.

11/02/2010  
Case No: 39 986/2009

09.02.2010

DATE

SIGNATURE

In the matter between:

**FIRST RAND BANK LIMITED**

Plaintiff

and

**TJAARD DU PLESSIS**

First Defendant

**EMELDA DU PLESSIS**

Second Defendant

**BERNHARD JENS DU PLESSIS**

Third Defendant

#### JUDGEMENT

**SAPIRE, A J:**

The Plaintiff instituted action against the three defendants claiming repayment of monies lent in advance. The loan was secured by a mortgage bond, a copy of which is attached to the Summons.

The amount claimed is R 948 299,87. The Plaintiff further claims interest on this amount at the agreed rate of 9.9 % per annum from the 1<sup>st</sup> of June 2009 to the date of payment.

The Plaintiff further claims an order declaring immovable property fully described in the Summons and in the Notice of Application for Summary Judgement. The Defendants, the Plaintiff claims are to pay the costs of the suit.

Attached to the Summons are all the relevant documents. The Summons was duly served on the Defendants who have given notice of intention to defend. In response to such Notice the Plaintiff has applied for summary judgment which application was originally set down for Wednesday the 14<sup>th</sup> of October 2009. The Defendants have not filed any Affidavits.

When the matter came before Kemp, AJ the matter was postponed to the 9<sup>th</sup> of December 2009 and there is a note on the court file that the Defendants were ordered to pay the costs of that hearing.

The matter came before me on the 9<sup>th</sup> of December 2009 and was stood down until Friday the 11<sup>th</sup> of December 2009. On the Friday when the matter was called there was no appearance and I made an order that the matter would be postponed to the 31<sup>st</sup> of December 2009 and for the Defendants to file their Affidavits. Later in the day both counsel appeared before me and at their request I recalled the order and heard argument from the Defendants' counsel.

As previously stated the Defendants did not file any Affidavit and the point raised was that although it was alleged in the Summons that the Plaintiff had complied with the provisions of Section 129 of the National Credit Act it appeared from the documents filed that only one such notice was in fact sent. Accordingly the provisions of Section

129 of the Act had not been complied with because there were three of them and notice to one did not suffice. This argument cannot be sustained. The Notice which was sent was addressed to all three of the Defendants and posted or delivered to the domicilium citandi et exetudandi chosen by all of them.

The Notice itself although a single document was addressed to all three of the Defendants who are joint and severally principal debtors in respect of Plaintiff's claim.

The argument raised by the Defendants is therefore specious and is not a reason for refusing summary judgement.

This view is strengthened by the failure of the Defendants to file Affidavits denying receipt of the Notice.

I therefore grant Summary Judgement in terms of prayers 1, 2, 3 and 4 of the Notice of Application for Summary Judgement.

  
S W SAPIRE

ACTING JUDGE AT THE NORTH GAUTENG HIGH COURT

PRETORIA