



**IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)**

**NOT REPORTABLE
In the matter between**

**CASE NO.: 2160/08
DATE: 28/1/2009**

PLUMBTASTIC PLUMBING CC

1st Applicant

IAN ROBERT SWINGTON

2nd Applicant

and

**CENTURION HOME CENTRE (PTY) LTD t.a
HOME CENTRE TIMBERCITY**

Respondent

In re:

CENTURION HOME CENTRE (PTY) LTD t/a

HOME CENTRE

Plaintiff

And

PLUMBTASTIC PLUMBING CC

1st Defendant

IAN ROBERT SWINTON

2nd Defendant

CORAM: EBERSOHN AJ

DATE HEARD: 20th August 2008

JUDGMENT HANDED DOWN ON: 28th January 2009

JUDGMENT

EBERSOHN AJ.

- [1.] This is an opposed application to set aside a default judgment.
- [2.] It appears that the plaintiff obtained a default judgment on the 14th February 2008 under Case no. 2160/2008 against both applicants. This application then followed.
- [3.] As reason for the delay to timeously file an appearance to defend the second applicant stated that there was an agreement between the defendant's attorney and the plaintiff's attorney that the appearance to defend could be faxed, which was done.
- [4.] The plaintiff's attorney disregarded the faxed appearance to defend, he denies the said agreement, and then applied for default judgment which the applicant regard as an irregularity.
- [5.] I find the reason advanced by the defendants as credible.
- [6.] The defence raised in the application is that the provisions of the National Credit Act, No 34 of 2005, apply and that the plaintiff did not comply with the peremptory provisions thereof. This was denied by the plaintiff.
- [7.] It is not possible on the papers, to decide on the merits against the defendants

regarding the defence raised and the matter will have to go on trail.

[8.] The judgment was written on the 28th of August 2008 but the file went missing and that delayed the handing down of this judgement.

[9.] I accordingly make the following order.:

1. The default judgement granted against both defendants on the 14th February 2008 in case no. 2160/08 is set aside and leave is granted to the two defendants to defend the case on the merits.
2. The costs of this application will be costs in case 2160/08.

P.Z. EBERSOHN

ACTING JUDGE OF THE HIGH COURT

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