IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

In the matters between:

STANDARD BANK OF SOUTH AFRICA LIMITED 18534/2010

and

DIE RASSIE EN RONEL KLEYN FAMILIE TRUST EN 2 ANDER

STANDARD BANK OF SOUTH AFRICA LIMITED

and

SHAFIEK JOSEPH 19441/2009

JUDGMENT HANDED DOWN ON FRIDAY, 3 DECEMBER 2010

CLEAVER J

[1] The abovementioned matters came before me in motion court some time ago and were postponed in order to receive representations from counsel as to whether, in the light of the judgment in *Rossouw*[1] judgment the provisions of s 129(1)(a) of the National Credit Act 34 of 2005 ("the NCA") had been complied with.

[2] Section 130 of the NCA which sets forth the procedure to be followed when a credit provider wishes to enforce a credit agreement, provides inter alia that the credit provider must have delivered the prescribed notice in terms of s 129(1) of the NCA before the agreement may be enforced. In *Rossouw* it was held that in an application for summary judgment the plaintiff was required to satisfy the court by including appropriate averments in the summons to establish that the manner in which the parties had agreed that notices in terms of their contract

[1] *Rossouw and Another v First Rand Bank t/a FNB Homeloans* case no 640/2009 (SCA) 30 September 2010.

would be forwarded to the defendant had been complied with or failing that, that one of the methods set forth in s 65(2) had been followed. In the cases before me, the defendants in each case elected in the mortgage bonds relied upon to receive notices by registered post addressed to them at the addresses stated in the bonds. In neither of the cases before me does the summons contain a reference to the manner in which the notice in terms of 129(1) was delivered to the defendant. This information does however appear from the affidavit filed by the plaintiff in terms of Practice Note 33(1) of the Consolidated Practice Notes for this court. From this and its attachments, it appears clearly in each case that the notices were forwarded to the defendants by registered mail at the address chosen by them in the mortgage bond. Although *Rossouw* requires the method of delivery of the section 129(1) notice to be set forth in the summons or its annexures, there is a suggestion in para 52 thereof, that the necessary allegations could appear in the certificate of compliance, i.e. the affidavit filed in terms of Practice Note 33(1). Having regard to the practice which has been followed in this division for more than a year and the fact that all the necessary information to prove satisfactory delivery of the notices to the defendants are to be found in the compliance affidavits, there can in my view be no prejudice to the defendants who did not enter an appearance to defend the actions and who consequently do not deny compliance with the relevant sections.

[3] In the circumstances, there will be judgment as claimed in each of the two matters, but in future practitioners would be advised to ensure that the necessary allegations appear in detail and in compliance with the *Rossouw* judgment in the summons or annexures to the summons.

R B CLEAVER