



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 03 June 2016
STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

**Blue Chip 2 (Pty) Ltd t/a Blue Chip 49 and Cedrick Dean Ryneveldt & 26 Others [2016]
ZASCA 98 (03 June 2016)**

MEDIA STATEMENT

The Supreme Court of Appeal today dismissed an appeal in respect of a claim for the recovery of loans made to a number of people. It dealt with the Ryneveldt case as a test.

The appellant, a credit provider in terms of the National Credit Act 34 of 2005 granted a loan to Ryneveldt. The loan contract was signed by the parties within the magisterial district of Bloemfontein. In terms of that contract specified monthly payments had to be made into the appellant's account held in Bloemfontein. The respondent defaulted thereon.

In terms of s 129 of the National Credit Act, a notice in which the default as well as certain options available to the debtor had to be delivered to the latter before the institution of any claim in regard to the contract. In this case the said notice was delivered to Ryneveldt by post intended to be delivered at his chosen address which was situated in Kimberley. Upon the signing of a consent to judgment by Ryneveldt, judgment in favour of the appellant was sought from the Magistrate in Bloemfontein. The magistrate refused to grant judgment in favour of the appellant for lack of jurisdiction since the required notice had been delivered to an address outside the court's area of jurisdiction and since the cause of action did not wholly arise within the district of Bloemfontein as required by s 28(1)(d) of the Magistrates' Court Act 32 of 1944. An appeal to the Free State Division of the High Court, Bloemfontein was unsuccessful.

It was argued in this court that the delivery of a s 129 notice was merely a procedural step and that the cause of action had been manifested in Bloemfontein when the breach of the contract had occurred. It was held that where a statute provides that before an action can be commenced or a claim enforced against a debtor a notice be given, then the giving of that notice is essential to the successful pursuit of that claim and proving that it was given, is part of the cause of action. In other words, the delivery of such a notice is a mandatory requirement which must be satisfied before judgment can be granted for recovery of an outstanding debt. The failure to prove compliance with peremptory steps prior to judgment will result in the court refusing to grant judgment in favour of a claimant as happened in this case.

Furthermore, consenting to judgment did not cure the problem because the cause of action did not wholly arise within the district of the Bloemfontein Magistrate's Court.

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