

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: 2022-039758

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
[1]	28 August 2023 _____
[2]	DATE SIGNATURE

In the matter between

**CLINE,
Applicant**

GREGORY

BOBBY

and

**CLINE, MICHAEL SOLOMON
Respondent**

First

**CLINE, BRADLEY IRA
Respondent**

Second

**FEIGIN, PETA IRA
Applicant**

Third

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by e-mail. The date and time for hand down is deemed to be 14h00 on 25 August 2023.

JUDGMENT

MUDAU, J:

[1] On 19 July 2023, I made the following order:

- “1. The First Respondent shall pay to the Applicant an amount of R 7 000 000 (SEVEN MILLION RAND).
2. The First Respondent shall pay interest to the Applicant on R7 000 000 (SEVEN MILLION RAND) at the prime rate of interest charged by Investec currently at 9.5% per annum from 17 August 2022 to date of final payment.
3. The First Respondent shall pay the costs of suit and all other costs incurred by the Applicant on the scale as between attorney and own client.
4. The following immovable properties are declared specially executable: —
 - 4.1 Erf [...] Stand [...] situated at [...] Road, P[...], Western Cape held under title deed [...] (the "P[...] Property").
5. No reserve price is set in respect of the P[...] Property.
6. The application in respect of declaring the immovable property situated at Lot [...] D[...] situated at [...] Road, D[...], Johannesburg held under title deed [...] (the "D[...] Property") valued specially executable, is postponed sine die”.

[2] The matter served before me as a default judgment application. The facts are uncontroverted. The applicant issued summons against the first respondent seeking payment in the amount of R7million; interest on R7million at the prime rate of interest charged by Investec, from 17 August 2022 to date of final payment; Costs of suit on an attorney and client scale; and an order declaring

the following immovable properties executable. These properties are, Lot [...] D[...], at [...] Road, D[...], Johannesburg (the "D[...] Property") valued at R25 333 000.00; Erf [...] Stand [...] situated at [...] Road, P[...] (the "P[...] Property").

[3] The first respondent, Michael Solomon Cline, resides at [...] Road D[...], Johannesburg and is the father of the applicant. The second respondent, Bradley Ira cline, is the brother of the applicant. The third respondent, Peta Ira Cline, is the sister of the applicant.

[4] The second and third respondents were cited insofar as they may have a direct and substantial interest in the outcome of the action. All three respondents opposed the action. However, the respondents failed to deliver a plea timeously. Consequently, on 18 January 2023, a notice of bar was served on the respondents. The Respondents failed to react to the notice of bar and were, accordingly, ipso facto barred from filing a plea.

Background facts

[5] The applicant averred that the debt of R7million arises out of a settlement agreement concluded between the parties in respect of monies allegedly misappropriated by the first respondent from the applicant's mother's deceased estate. This is not in dispute. The settlement agreement contemplated that mortgage bonds would be registered over the D[...] and P[...] Properties as security for discharge of the debt, which was not done. The applicant received payment of R450 000.00 from the first respondent, as contemplated in the settlement agreement, but the remaining R7million.

[6] Clause 4 of the settlement agreement stipulates that: *"The Parties agree that the Covering Bonds over P[...] and D[...] in the sums of R2,000,000.00 (two million Rand) and R5,000,000.00 (five million Rand) respectively, shall be registered as to P[...] within 120 (one hundred and twenty) days from the date of signature of this agreement in regard to D[...] unless P[...] is sold and the bonds on D[...] defrayed and then the covering shall forthwith be registered over D[...] as well.. The total Covering Bonds to be registered shall be for an*

amount of R7,000,000.00 (seven million Rand). Should either the Covering Bond for P[...] not be in place forthwith (and in any event within 120 (one hundred and twenty) days) or the Covering Bond for D[...] not be in place within 12 (twelve) months of the signing of the agreement, MSC (the first respondent) will be in breach thereof. Breach will occur if either of the Covering Bonds are not registered timeously”.

[7] On the eve of hearing this application, the respondent launched an application in terms of rule 30A(2) of the Uniform Rules of Court ("the Rules") seeking an order to strike out the applicant's notice of motion re: Default judgement application issued on 25 May 2023 and served on 26 May 2023, on the basis that they were given 5 days to respond indicating their intention to oppose instead of 10 days, in accordance with Rule 6(5)(b)(ii) of the Uniform Rules of Court.

[8] According to counsel who appeared on behalf of the respondents, a 'with prejudice offer" was made on 18 July 2023, to the applicant to tender performance, with costs on a party and party scale, in accordance with the contract and thus settle the matter. The respondents expressed fear that the primary residence of the first and third respondents will be sold in execution.

[9] There was no attack on the settlement agreement or any genuine defence being raised. The terms of the order specifically address the fear expressed by the respondents. I could find no material prejudice to the respondents occasioned by the application. The set down date did not prejudice the respondents. It is for the above reasons that the order was made.

TP MUDAU
JUDGE OF THE HIGH COURT
JOHANNESBURG

APPEARANCES

For the Applicant:

Adv. Adv. K Sila

Instructed by:

Rothbart Incorporated

For the Respondent:

Adv. J Hoffman

Instructed by:

Stan Fanaroff & Associates

Date of Hearing:

18 July 2023

Date of Judgment:

25 August 2023