

IN THE MAGISTRATES COURT FOR THE DISTRICT OF JOHANNESBURG

HELD AT JOHANNESBURG

CASE NO: 6003/5103

In the matter between:

**Mr A**

PLAINTIFF

and

**MR B**

DEFENDANT

**DEFENDANT'S PLEA**

**The defendant pleads as follows to the Plaintiff's summons and particulars of claim**

**1. AD SPECIAL PLEA: PLEA IN ABATEMENT**

**KINDLY TAKE NOTICE** that Defendant pleads that the debt for which summons was sued out is prescribed in terms of section 11(d) of the Prescription Act 68 of 1969 and further that the Defendant has claimed extinctive prescription from the Plaintiff

**The Defendant raises the defence of extinctive prescription. The Defendant pleads to this Honourable court that on this ground alone the Plaintiff's action ought to be dismissed with costs.**

- 1.1 The Plaintiff's claim is based on a credit card contract which was concluded on 20 January 2005. The defendant made monthly payments for the months of January, February, March, April and May of 2005. The defendant lost his job on 30 June 2005. On the 30 June 2005, the plaintiff's claim fell due;
- 1.2 The Plaintiff had three(3) years from the date on which the debt fell due( 30 June 2005) to legally collect the debt from the defendant which the plaintiff failed, alternatively refused, alternatively neglected to do;

- 1.3 The debt prescribed on 30 June 2008. The defendant claimed extinctive prescription from the plaintiff on 10 August 2008 which the plaintiff either failed, alternatively neglected alternatively refused to acknowledge and/or process the defendants claim for extinctive prescription;
- 1.4 There was no wilful concealment of the defendant's identity and/or contact details from the plaintiff in terms of section 12(2) of the Prescription Act 68 of 1969
- 1.5 Plaintiff's summons was served on defendant on 15 February 2012 , which is more than three years after the date on which the claim arose, which such claim arose on 30 June 2005
- 1.6 In the premises, the plaintiff's claim is prescribed in terms of section 11(d) of the Prescription Act 68 of 1969.

## **2.AD MERITS**

### ***AD PARAGRAPH 1 THEREOF***

The defendant admits the contents of this paragraph

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The defendant denies the contents of this paragraph and puts the plaintiff to the proof thereof. The defendant states his defence as extinctive prescription in terms of section 11(d) of the Prescription Act 68 of 1969. The defendant states and confirms for the record that he did claim extinctive prescription from the Plaintiff on 10 August 2008 which the plaintiff either failed, alternatively neglected alternatively refused to acknowledge and/or process the defendants claim for extinctive prescription

**Therefore the Defendant prays that the Plaintiff's claim be dismissed with costs**

## COUNTERCLAIM

1.

*Brevitas causa* the parties are referred to as in convention.

2.

The Defendant claimed extinctive prescription from the Plaintiff to attain the finality, alternatively closure, alternatively certainty, alternatively the extinguishing of the debt. The Defendant's intention, by virtue of his extinctive prescription claim, was to create such certainty as to the status of the debt, that there could be no reasonable doubt whatsoever after the fact of the extinctive prescription claim that the debt is extinguished and is no longer collectable.

3.

The Defendant claimed extinctive prescription from the Plaintiff via registered mail, electronic mail and personal service. The intention was, that by invoking section 11(d) of the Act, the defendant would not have to contend with a situation where there remains uncertainty as to the existence of a debt.

4.

The Defendant claimed extinctive prescription from the Plaintiff to avoid a situation where in the absence of an extinctive prescription claim that can be proved, the Plaintiff sues out summons and the Defendant cannot prove that he claimed extinctive prescription. The Defendant claimed extinctive prescription from the Plaintiff to avoid a situation where he would have to file a notice of intention to defend, file a plea and appear in court.

Wherefore Defendant prays for judgment against Plaintiff for:

- a) Payment of R20 000
- b) Cost of suit.

Signed at Johannesburg on this \_\_\_\_\_ day of June 2012

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Attorneys for Defendant

XYZ

10 Fictitious Street

Soweto

1820

TO: The Clerk of the Court

Johannesburg

TO: Mr Shark

ATTORNEYS FOR PLAINTIFF

ADDRESS: XYZ Made up Street, Johannesburg, 2000

Received copy hereof on this the

\_\_\_\_\_ day of **2012**

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ATTORNEYS FOR PLAINTIFF