What it means to have a judgment listed on your credit record

In short, it means you did not pay a debt at one point in time and the creditor you owed secured the debt by getting a court to grant a judgment against you. The judgment secures the debt as the creditor can now attach any property you own in order to satisfy the judgment debt.

Even though you may settle the debt concerned, the judgment listing shall remain on your credit record for a mandatory period of 5 years. Mandatory as the National Credit Act provides that a judgment listing must be reflected on your credit record for 5 years. Even the judgment creditor cannot request the credit bureau to remove the listing from your credit record.

Prior to the expiry of the 5 year period, a judgment listing can only be removed from your credit record if a rescission application is made to the very same court that granted the judgment in the first instance.

Rescission of a High Court Judgment

Unlike in the Magistrate Courts where a judgment can be rescinded once you have settled the debt and the creditor has consented to the judgment being rescinded, a High Court judgment can only be rescinded in the following instances:

1. The judgment was "sought or granted in error" or,
2. You were not in “willful default” and “good cause” exists, i.e. you have a bona fide defence.

The fact that the arrears on the account or the account itself settled is not the basis upon which a High court shall grant the rescission of a judgment. Once again, even the judgment creditor cannot instruct the credit bureau to remove the listing from your credit record and even the creditors consent to rescind the judgment shall not automatically result in the High Court rescinding the judgment.

1. **Sought or granted in error:**

Examples of Instances when the judgment can be said to be erroneously granted include the following:

(a) Before the date on which the judgment was granted you contacted the creditor or their attorneys and reached an agreement concerning the repayment of the account or any arrear amounts on the account. You subsequently did perform in terms of such an agreement. The agreement you reached need not have been in written and even a verbal agreement can be relied upon. If you do recall the names of the representatives of the creditor or the attorneys that you dealt with then great! If not, it is advisable to include a deposition (that is, a statement) in your rescission affidavit to the effect that you reached such an agreement with “a female or male representative of the Respondent (that is the creditor or their attorneys) whose name you cannot now reasonably recall.” If you do happen to

have a copy of such an agreement then we advise you to include this, together with any other supporting documentation, in your affidavit as an "Annexure"

(b) When you fell into arrears with the account, you contacted the creditor or their attorneys and they undertook or led you to believe that legal proceedings would be halted and or that no judgment would be granted against you. Once again, include any documentation that you may have that could explain why you came to think that the creditor or their attorneys would not take judgment against you. For example, your High Court judgment may relate to property you previously owned and that was subsequently sold and such sale came to the attention of the judgment creditor prior to the actual date on which the judgment was granted. If this was in fact the case, then it is arguable that the creditor should not have proceeded to take judgment against you.

Willful Default

Before a person can be said to be in willful default, he must have known that an action was being brought against him, but deliberately refrained from entering an Appearance to Defend, although he was free to do so, because he really could not care less about the consequences of not dealing with the matter.

Accordingly, if the summons did not come to your attention and the first you learnt about the Judgment was when the Sheriff arrived at your house to make an attachment, you could not be said to have been in willful default. At present, the rules of our Courts do not require personal service, so that a summons is deemed to have been served, even if it is served on someone else on your behalf or is merely affixed to the front gate of your house. In these circumstances, it is possible and often likely that the summons will not be brought to your attention.

Another example would be where you dealt with the summons timeously by handing it to your attorney, but he inadvertently and not negligently misplaced the file in his office and it was through no fault of your own that Judgment was entered against you.

Good cause (bona fide defence)

Once you have satisfied the Court that you were not in willful default in allowing the Judgment to be entered against you, you must demonstrate that a substantial defence exists. It would be sufficient to show that you have a prima facie defence that is likely to succeed at trial.

Rule 42 of the High Court Rules sets out the grounds for the variation and rescission of an order. Good cause exists where: an order or judgment was wrongly sought or granted in the absence of any affected party; there is an ambiguity, a patent error or omission to the extent of such ambiguity; an order or judgment was granted as a result of a mistake common to the parties.

If the judgment creditor does consent to the rescission, the court will take the following into account:

- reasonableness in the behaviour of the applicant (the person bringing the application to set aside the judgments);
- that the application is made in good faith; and that the applicant has a bona fide substantial legal defence (based on the merits of the case).

Examples of legal defences The following are examples of a good defence:

- fraud by the Plaintiff;
- an error in law (justus error);
- new documents are discovered;
- judgment was granted by default (without the Defendant being aware of the summons in the first place); on grounds of just cause (justus causa).

At the end of the day, whether or not a court will set a judgment aside is solely within the discretion of the judge that hears the application.