

Short notes on:

## **PROVISIONAL SENTENCE SUMMONS**

### ***Introduction***

The South African civil litigation process forms two main branches: application and action proceedings. Provisional Sentence Summons is a mechanism that forms part of action proceedings and requires specific criteria to be met in order to utilise it.

### ***Overview***

The provisional sentence summons mechanism is utilised in instances where the defaulting party cannot deny liability. In other words, a provisional sentence summons may be used to initiate the litigious process if the claim is based on a liquid document or a liquidated sum of money, claims for ejectment and claims for the delivery of specified immovable property.

A *liquid document* refers to a document whereby the mere assessment of the document will indicate liability on the part of the debtor. An acknowledgement of debt which includes an unequivocal admission of liability by the debtor, is a liquid document. In other words, the courts would not require the leading of other evidence to prove liability as the liquid document establishes that.

A *liquidated sum of money* refers to instances where the amount owed has been agreed upon or where the amount owed is easily quantifiable from the agreement.

With due regard to the above, provisional sentence summons' are used in instances where the creditor has the *prima facie* evidence to prove its case and therefore seeks speedy judgment from the courts in respect of same.

The provisional sentence summons will call upon the defendant to appear in court on a given day and affords the defendant the opportunity to deny liability within a given period. If based on a liquid document, the liquid document will be attached to the provisional sentence summons.

## **Conclusion**

It must be noted that the courts may still determine that the defendant has a defence against liability upon assessment of the information attached to the provisional sentence summons. Liquid documents, which are agreements, in particular, need to be properly drafted in order to serve their intended purpose.

Contact an attorney at SchoemanLaw Inc for your civil litigation needs!