

SOUTH AFRICA / JUDGMENT

Botes t/a JHLS Botes Vervoer v Standard Bank of South Africa Limited (M85/15) [2015] ZANWHC 72 (30 October 2015)

[2015] ZANWHC 72

COURT

North West High Court, Mafikeng

BEFORE

A A Landman

CASE / FILE NUMBER

M85/15

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IN THE HIGH COURT OF SOUTH AFRICA

NORTH

WEST PROVINCIAL DIVISION, MAHIKENG

CASE NO: M85/15

In

the matter between:

JOHANNES

HENDRIKUS LAMBERTUS STEPAHUS BOTES

T/A

JHLS BOTES VERVOER

APPLICANT

and

THE STANDARD BANK OF SOUTH AFRICA

LIMITED RESPONDENT

JUDGMENT

(LEAVE TO APPEAL)

Landman J:

Introduction

[1] Mr J H L S Botes trading as JHLS Botes Vervoer, the respondent in the main action brought by the Standard Bank of South Africa Ltd, the applicant in the main action, seeks leave to appeal against my order confirming the cancellation of eight installment sale agreements and the authorization for the Sheriff to seize and handover eight vehicles being the subject of the agreements. Originally the notice of motion related to nine such agreements but agreement marked 'E'

was to be left out of account. Paragraph 1 of the order was framed too widely and included "E" but the absence of "E"

in paragraph 2 of the order and paragraph 1 of my judgment makes it clear that "E" was not and is not a subject of the order. I therefore amend paragraph 1 of the order accordingly.

[2] The grounds upon which leave to appeal is sought has been set out in the application for leave to appeal. Essentially the question is whether another court may reasonably come to the conclusion that a debtor who has defaulted and not complied with his obligations in terms of instalment sales agreements who was served with a section 129 notice and with whom the creditor entered into a 'restructuring agreement' and who gain defaulted in his payments, is entitled

to a further section 129 notice before the creditor may cancel the agreement?

[3] In the light of the arguments advanced by both counsel this issue is clearly one of some importance and deserves the attention of a court of appeal as there is a reasonable possibility that it may reach a different conclusion to that which I reached. The point is a succinct one and merits the attention of the Supreme Court of Appeal. Both counsel agreed (regardless of the notice of application) that should I grant leave to appeal, it should be the Supreme Court of Appeal.

Order

[4] In the circumstances I make the following order:

1. Paragraph 1 of the order granted on 27 September 2015 is amended by deleting "B-J" and replacing it with: 'B to D and F to J'.
2. The respondent (J H L S Botes trading as JHLS Botes Vervoer) is granted leave to appeal to the Supreme Court of Appeal against the whole of my judgment delivered on 3 September 2015.
3. The costs of the application for leave to appeal shall be costs in the appeal.

A A Landman

Judge of the High Court

Appearances

Date of hearing:

30 October 2015

Date of

Judgment:

5 October 2015

For the Applicant:

Adv Cowley instructed by Maree & Maree Attorneys

For the Respondent:

Adv Viljoen instructed by Van Rooyen Tlhapi & Wessels Inc

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