

SOUTH AFRICA / JUDGMENT

Bulowayo Construction (Pty) Ltd v Firststrand Auto Receivables (RF) Limited (375/2021)

[2023] ZAECKMKHC 67 (19 May 2023)

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COURT

Eastern Cape High Court, Makhandla

BEFORE

N G Beshe

CASE / FILE NUMBER

375/2021

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IN THE HIGH COURT OF
SOUTH AFRICA
(EASTERN CAPE
DIVISION, MAKHANDA)
CASE NO: 375/2021

In the matter between:

BULOWAYO
CONSTRUCTION (PTY) LTD
Applicant
/ Defendant
And
FIRSTRAND
AUTO RECEIVABLES
Respondent
/ Plaintiff
(RF)
LIMITED

JUDGMENT

BESHE J:

[1] This is an application for the rescission of an order that was granted by Bloem J on the 29 March 2022 in the following terms:

IT IS ORDERED THAT:

Judgment by default be and is hereby granted in favour of the Plaintiff against the Defendant in the following terms:

1. the Agreement with account number 8[...] entered into between the Plaintiff and Defendant relating to the vehicle, being a 2017 ISUZU KB 250D LEED P/U S/C, with Engine Number 4[...], Chassis number A[...] be and is hereby cancelled;
 2. the Defendant shall return the vehicle, described above, to the Plaintiff;
 3. the Defendant shall pay the Plaintiff costs of suit on the Magistrate's Court Tariff.
- [2] Mr Vizard Mandla who is the Managing Director of the applicant, Bulawayo Construction appeared in person.
- [3] Needless to say that no replying affidavit had been filed. No heads of argument were filed on behalf of the applicant. Respondent took the initiative to have the matter set down for hearing.
- [4] Preceding the issuance of the order mentioned herein above, respondent issued summons against applicant on the basis that it had breached the terms of the contract that was concluded between the parties regarding the sale of the motor vehicle that is the subject of these proceedings.
- [5] The summons was served at the domicilium citandi chosen by the applicant, on 14 October 2021. Prior to that, it appears to be common cause that applicant's payments were made erratically. Applicant failed to file a notice of intention to defend. This resulted in the default judgment in respect of which the rescission is sought.
- [6] Applicant does not deny that he has not kept up with the terms of the agreement, as well as those of subsequent payment arrangements or that an amount in excess of R100 000.00 is still owing to the respondent. There is no explanation in Mr Mandla's affidavit as to why an appearance to defend was not entered. The answer is however not far to locate. The applicant does not have a defence to respondent's claim, apart from claiming that payments are still being made and that there is a payment agreement

in place. Applicant does not seem to have a bona fide defence to the claim. Applicant's failure to enter an appearance to defend is not explained in the founding affidavit. In argument, Mr Mandla explained that he was not always at home but could not explain when he became aware of the summons or what he did upon becoming aware that action had been instituted against the applicant in this regard. Mr Mandla does not state when he became aware of the judgment that was granted against applicant.

[7] The applicant does not allege that the judgment was erroneously sought or erroneously granted. As was correctly pointed out by Mr Somandi for the respondent, the applicant does not seem to have a bona fide defence. In other words, Mr Mandla did not put forward any facts that applicant intends to place before court which if they are true will amount to a defence to respondent's

claim. Mr Mandla has not given a reasonable explanation for the default in filing an appearance to defend, applicant's failure to defend the matter. The applicant has not succeeded in making out a case for the default judgment that was entered against it on 29 March 2022 to be rescinded.

[8] Accordingly, the application for the rescission of the order granted against the applicant on the 29 March 2022 is dismissed with costs.

N G BESHE

JUDGE OF THE HIGH COURT

APPEARANCES

For the Applicants / Defendant: Mr Vizard Mandla Instructed by: In Person Tel.: 073 140 1920 / 066 558 1833 Email: Bulowayo64@gmail.com For the 1st Respondent / Plaintiff: Adv: Somandi Instructed by: SCHNEIDER GALLOON REEF & CO. C/o HUXTABLE ATTORNEYS 26 New Street MAKHANDA Ref: 01S076023 Tel.: 046 – 622 2692 Date Heard: 05/18/23 Date Reserved: 05/18/23 Date Delivered: 05/19/23

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