

SOUTH AFRICA / JUDGMENT

Compair (SA) (Pty) Limited v Van Jaarsveldt N.O. and Others (47458/21)

[2022] ZAGPJHC 513 (3 August 2022)

[2022] ZAGPJHC 513

COURT

South Gauteng High Court, Johannesburg

BEFORE

Nochumsohn

CASE / FILE NUMBER

47458/21

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

CASE

NO. 47458/21

REPORTABLE:

YES / NO

OF

INTEREST TO OTHER JUDGES: YES / NO

In

the matter between:

COMPAIR

(SA) (PTY)

LIMITED

Applicant

and

ANIKA

VAN JAARSVELDT

N.O.

First

Respondent

JOHAN

FRANCOIS ENGELBRECHT N.O.

Second Respondent

SIMON

JIYANE

N.O.
Third Respondent
THE
MASTER OF THE HIGH COURT
Fourth Respondent

JUDGMENT

NOCHUMSOHN AJ

1. This is a vindicatory motion in which the Applicant seeks an Order against the First to Third Respondents for the return of the equipment set out in a schedule in annexure “FA2” to the Founding Affidavit.
2. It is common cause that the Applicant had entered into an oral Agreement with a company known as Normellaz, the terms and conditions of which were those set out in the unsigned written agreement constituting annexure “FA2” to the Founding Affidavit.
3. The First to Third Respondents are the joint liquidators of Normellaz, which entity was placed in liquidation prior to the termination of the sixty-month term agreed upon in “FA2”.
4. It is common cause that the Agreement meets the requirements contemplated in paragraphs (a), (b) and (c)(i) of the definition of “instalment agreement” set out in section 1 of the National Credit Act of 2005. In accordance with section 1 of the National Credit Act an instalment agreement is defined:

“a sale of movable property in terms of which-

- (a) all or part of the price is deferred and is to be paid by periodic payments;
 - (b) possession and use of the property is transferred to the consumer;
 - (c) ownership of the property either –
 - (i) passes to the consumer only when the agreement is fully complied with; or
 - (ii) passes to the consumer immediately subject to a right of the credit provider to repossess the property if the consumer fails to satisfy all of the consumer’s financial obligations under the agreement; and
 - (d) interest, fees or other charges are payable to the credit provider in respect of the agreement or the amount that has been deferred.”
5. The Applicant disputes that the Agreement meets the requirements of (d) above, inasmuch as on its version there was no interest, fees or other charges payable. In contrast to this, the Respondents indicate that from the pure arithmetical calculations reflected in “FA2” there must have been interest, fees or other charges payable with the result that (d) to the definition of

an instalment sale would have been applicable.

6. For the relief sought, the Applicant hangs its hat solely upon the non-applicability of paragraph (d) to the said definition of an instalment sale. The thrust of this argument is that if sub-paragraph (d) to the said definition is not applicable, then the agreement would not be an “instalment agreement”, with the results that:
 - 6.1. the provisions of Section 84(1) of the Insolvency Act would find no application;
 - 6.2. the applicant would remain the owner of the equipment; and
 - 6.3. as such, the Applicant would be entitled to the vindicatory relief sought in the Notice of Motion.
7. The Respondents correctly argue that the fallacy in the aforementioned argument lies in the fact that section 84(1) of the Insolvency Act does not require fulfilment of (d) to the definition of an instalment agreement, as set out in section 1 of the National Credit Act.

[1]

At [9].

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