

SOUTH AFRICA / JUDGMENT

**Firststrand Bank Limited t/a Wesbank v
Abandoned Solutions SA (Proprietary) Limited
(2019/31586) [2020] ZAGPJHC 124 (8 May 2020)
[2020] ZAGPJHC 124**

COURT

South Gauteng High Court, Johannesburg

BEFORE

C G Lamont

CASE / FILE NUMBER

2019/31586

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA,

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2019/31586

In the matter between:

FIRSTSTRAND BANK LIMITED t/a WESBANK Applicant

And

ABANDONED SOLUTIONS SA (PROPRIETARY) LIMITED Respondent

J U D G M E N T

LAMONT, J:

- [1] The applicant brought an application against the respondent seeking delivery of a motor vehicle in respect of which the respondent claimed it had a lien and for other relief. The applicant tendered a guarantee as substitute security.
- [2] The respondent is in possession of a vehicle owned by the applicant and claims a right to retain it on the basis that it is exercising a lien. The applicant sold the vehicle to its customer in terms of an Instalment Sale Agreement. The customer commenced business rescue proceedings in consequence of which the applicant cancelled the Instalment Sale Agreement. The applicant relied on a term within the agreement reserving ownership to it notwithstanding delivery to its customer. The business rescue practitioner of the customer accepted that the applicant was the owner and consented to the applicant retaking the

vehicle and exercising rights of ownership in respect thereof.

- [3] The respondent faintly disputed the applicant's rights of ownership based on speculation. It gave no evidence to gainsay what the applicant set out. In my view, the papers establish that the applicant is the owner of the vehicle in question.
- [4] The applicant looked for the vehicle, as its customer was not in possession thereof. It found the vehicle in the possession of the respondent. It is unclear how the respondent came into possession of the vehicle. However, the respondent appears to have obtained possession from a repair shop and claims to have rights pursuant to a lien transferred to it by the repair shop. The applicant denies the validity of the respondent's claim. However, notwithstanding the denial, for the purposes of the proceedings, it accepted the obligation to deliver substitute security to the respondent as against delivery of the vehicle to it.
- [5] The owner of property subject to a right of retention by another is entitled to furnish adequate security for payment of the debt and as against the furnishing of that security to release of the security held.
- [6] See for example *Spitz v Kesting* 1923 (W) LD 45; *Hochmetals Africa (Proprietary) Limited v Otavi Mining Co. (Proprietary) Limited* 1968 (1) SA 571 (A) at 582 C – F; *Pheiffer v Van Wyk and Others* 2015 (5) SA 464 SCA at 20 and 21; *Myers v Gearbox Centre (Proprietary) Limited* 1977 (4) SA 11 (W) at 15 A.
- [7] The guarantee furnished by the applicant, guarantees the full amount of the respondent's claim, including further storage costs as per judgment being granted.
- [8] It is my view that the substitute security tendered is adequate and that the applicant is entitled to delivery of the vehicle.
- [9] As far as, costs are concerned it does not appear to me that a special order is warranted and ordinary costs on the party and party scale shall be of application.
- [10] I accordingly make an order in terms of the draft incorporating the guarantee annexed hereto.

C G LAMONT

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

COUNSEL FOR APPLICANT: Adv. W.G.H. Pretorius

APPLICANT'S ATTORNEYS: Rossouws Lesie Inc

COUNSEL FOR THE RESPONDENT: Att. M. Fehler

RESPONDENT'S ATTORNEYS: M. Fehler Attorneys

DATE OF HEARING: 4 May 2020

DATE OF JUDGMENT: May 2020

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPJHC/2020/124.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/firststrand-bank-limited-ta-wesbank-v-abandoned-unknown-topic-agpjhc-2020>

Prepared on 14 October 2026 · Esheria