

SOUTH AFRICA / JUDGMENT

Johnson v Standard Bank of South Africa Limited (1442/2022) [2024] ZANWHC 237 (10 September 2024) [2024] ZANWHC 237

COURT

North West High Court, Mafikeng

BEFORE

R D Hendricks

CASE / FILE NUMBER

1442/2022

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IN THE NORTH WEST HIGH COURT, MAFIKENG

CASE NO: 1442/2022

Reportable: YES/NO

Circulate to Judges: YES/NO

Circulate to Magistrates: YES/NO

Circulate to Regional Magistrates: YES/NO

In the matter between:

TREVOR COLLIN JOHNSON

Appellant

AND

THE STANDARD BANK OF

SOUTH AFRICA LIMITED

Respondent

DATE OF HEARING & ORDER GRANTED : 09 MAY 2024

REASONS FOR JUDGMENT/ ORDER : 10 SEPTEMBER 2024

FOR THE APPLICANT

: ADV. L A PRETORIUS

FOR THE RESPONDENT

: MS. N NEETLING

REASONS

FOR JUDGMENT/ORDER

Delivered: This reasons for judgment/order was handed down electronically by circulation to the parties' legal representatives via email. The date and time for hand-down is deemed to be 15h00 on 10 September 2024.

HENDRICKS JP

Introduction

[1] On the 09 May 2024, after listening to the submissions made by the legal representatives (counsel and attorney) acting on behalf of both the applicant and the respondent respectively, I granted the following order in this opposed application for summary judgment:

"1. Condonation for the late service of the Applicant's Summary Judgment Application is hereby granted.

2. Confirmation of Cancellation of the Agreement.

3. Return of the following goods to the Applicant:

A 2015 MERCEDES-BENZ V250 BLUETECH,

ENGINE NUMBER 6[...],

CHASSIS NUMBER W[...].

4. Retention of all monies paid to the Applicant by the Respondent.

5. Leave is granted to the Applicant (to apply) for:

5.1 Damages, if any, an amount to be calculated by subtracting the market value of the goods if returned, and if not returned the market value will be noted as nil as well is a rebate on unearned finance charges from the balance outstanding, if applicable.

5.2 Interest on the said damages at the Prime Overdraft Rate Plus 2.550% per annum from 01 February 2022 to date of payment.

6. Cost of suit and party Scale B.

7. If reasons are required, same should be requested within ten

(10) days from the date of this order.”

[2] Mr. Trevor Collin Johnson, cited as the appellant, filed a document entitled ‘Application for Leave to Appel’ [sic] dated 23 May 2024 with the Office of the Registrar of this Court. This document is date-stamped 05 June 2024. No request for reasons for the ex tempore order/judgment was made. For the sake of completeness, the said document consisting of eighteen (18) pages is produced. It reads

thus:

“GROUNDS FOR LEAVE TO APPEAL

1. In this application for leave to appeal the Applicant relies inter alia on Section 17 (1)(a)&(c) of the Superior Court Act 10

of 2013.

2. There were two matters before the Court to consider:

2.1 An application for condonation regarding the late filing of the application for summary judgment; and if condonation is granted,

2.2 An application for summary judgment.

AD APPLICATION FOR CONDONATION

3. In this regard the Applicant is going to draw the Court's attention from the time summons were issued as it has a direct influence on the outcome of the matter.

4. The court erred in not taking the following facts into consideration.

4.1 Regarding the summons it was clear that the Respondent intends to issue summons on or during 25th April 2022. In this regard see page 2 of the index that the combined summons is reflected in.

4.2 The summons was eventually only issued on 27th June 2022 and therefore two months later.

4.3 Also to take notice of is that the summons appeared to be signed by an attorney of Hack Stupel and Ross, a firm practicing in Pretoria but allegedly signed at Mahikeng.

4.4 In issuing the summons the Respondent relied on annexure D to the summons, now page 27 of the index, to confirm the alleged arrear payments of the Applicant.

4.5 Annexure D is dated 9 February 2022 and reflects an amount of R307,197,79.

4.6 The alleged arrears therefore include the balloon payment of R132,053.40 payable only on 1st of July 2022 was therefore included in the alleged arrear amount More about this later.

4.7 The Respondent then finally issued summons 5 months later relying on the figures as set out in annexure D being 9 February 2022.

4.8 It is common cause that the amount stated in annexure D was completely wrong when the Respondent eventually issued summons on 24 June 2022, nearly 5 months later.

4.9 This negligence already caused unnecessary friction and litigation as the Applicant was bona fide making payments to the Respondent without any knowledge that the Respondent intends to issue summons

4.10 In the period mentioned, the Applicant has paid an amount of R76.500.00 which is considerably more than the agreed installment amount as set out in annexure B to the Particulars of Claim.

4.11 The Respondent has up to now failed to explain this delay for issuing the summons or to make sure that the figures of five months back is still correct as the alleged arrears are the foundation of the case.

4.12 A plea was filed on 21st September 2022.

4.13 The Application for summary judgment should therefore be serve and filed on or before 11 October 2022.

4.14 It is common knowledge that the Applicant served and filed the application for summary judgment out of time which resulted in a notice of an irregular step.

4.15 The Respondent then filed the application for condonation on 3 May 2023 with notice of set down for 11 May 2023, therefore also with short notice.

4.16 This application for condonation was therefore done about 140 court days.

4.17 Bearing in mind the Respondent is attempting to explain a delay.

4.18 Most disturbing is that it was established that:

4.18.1 The person who allegedly commissioned the affidavit could not be found on the list of practicing attorneys;

4.18.2 The address she referred to is not the address of the attorney's firm she alleged is the address she is practicing from;

4.18.3 She is unknown at the mentioned address.

4.18.4 As referred to in Absa Bank versus Botes NO[1] the Court refuse to admit an affidavit where it was not established whether the deponent was a male or female by leaving the “:

his/her” undeleted.

4.18.5 This is also the situation here.

4.19 In the purported affidavit for condonation, the Respondents only explanation was that his secretary had resigned, which is understandable, although condonation was refused with reasons already set out in the answering letter when condonation was requested.

4.20 The delay of about 140 court days to bring the application for condonation is not explained at all.

4.21 What is indeed relevant is that the Applicant kept on paying, which caused that the application for summary judgment brought as incorrect with the amount of R172,000.00.

4.22 It is argued that this amount played a vital role in any allegation that the Applicant was in arrears when the application for summary judgment was brought.

4.23 Again it must be noticed that the Respondent was busy to request the Court for condonation and it is argued that diligent actions can be expected.

4.24 The Respondent again showed his disregard for the Court's directives and completely failed to file Heads of argument in support of the application for condonation in the time frame as set out in the directives.

4.25 The Applicant indeed filed his Heads of Argument as prescribed by the High Court Directives.

4.26 The Respondent then filed his Heads of Argument on 6 May 2024 and therefore two days before the hearing of the application for condonation on 9 May 2024.

4.27 The Respondent then solely based his Heads of Argument on the Heads of argument and affidavit of the Applicant without referring to the affidavit of the Respondent on which the Heads of Argument of the Respondent should have been based.

5.The Honourable Court erred by refusing an application for postponement due to the very late filing of the Heads of Argument of the Respondent and the Respondent never had the opportunity to address the Court on the allegations as set out in the Heads of argument of the Respondent.

AD HEADS OF ARGUMENT OF RESPONDENT

6.The Court erred by not taking the following into consideration.

6.1 Regarding condonation for the late filing of the application for summary judgment the Respondent in ad paragraph 1.5 confirms the filing of the Application for Summary Judgment was late and then just stated that due to the objection regarding late filing the Respondent instituted an application for condonation.

6.2 No reasons is supplied why the very application for condonation was filed 140 court days or de facto 6 months after permission for the late filing of the Application for Summary Judgment was denied by the Applicant.

6.3 The Respondent completely fails to answer the allegation made that the attorney who had commissioned the affidavit in support of the Application for Condonation could not be found on the list of practicing attorneys or at the address the attorney where the mentioned attorney is practicing from.

6.4 The allegation that the commissioning of the oath itself doesn't comply with the prescriptions and rules of the ACT[2] and as confirmed in the Absa Bank v Botes NO[3] case.

6.5 For all practical purposes there never was an affidavit before Court to take notice of.

6.6 Notwithstanding above the Respondent is quiet on this matter.

7.The Court erred by not taking the prescriptions of Rule 27 of the Uniform Rules of Court into consideration.

7.1 Regarding an application for condonation Rule 27 of the Uniform Rules of Court is applicable and which states:

“Rule 27(1): In the absence of an agreement between the parties the Court may on application on notice and good cause shown, make an order extending or abridging any time prescribed by these Rules...” (writers own emphasis)

8.The Court erred to take into account that the Respondent fails to meet the prescriptions as set out in Rule 27(1) above:

8.1 The application is not supported by an affidavit;

8.2 Except to supply reasons for the initial late filing of the application for condonation, it must be expected from the Respondent to explain why the application was filed 140 court days late.

8.3 The whole purpose of an Application for Summary Judgment was defeated which is to bring an end to prolonged litigation.

8.4 Under "good cause" the following has crystallize:

8.4.1 A full and reasonable explanation, which cover the whole period of delay must be given by way of affidavit. In this regard see Van Wyk v Unitas Hospital[4].

8.4.2 If there was a long delay to bring the condonation application, the party in default must satisfy the court that the relief sought should be granted, especially in a case where the applicant is dominus litis. See the matter of Standard General Insurance Co Ltd v Eversafe (Pty) Ltd[5] It is not sufficient for the applicant to how that condonation will not result in prejudice to the other party.

8.5 It is argued that the Respondent failed to meet these standards.

8.6 It is conceded that a poor explanation can be condoned if there is an application with a strong possibility of success for which condonation is requested for.

8.7 This will be fully discussed hereunder in the application for summary

judgment

8.8 Suffice to already state here the following:

8.8.1 There is no affidavit before the Court in support of the application for condonation and therefore nothing to take notice of.

8.8.2 The Respondent has ceded his rights under the agreement, being annexure B to the Particulars of Claim as set out in clause 1.5.

8.8.3 Annexure C to the POC indicates that the Respondent has ceded his rights to the vehicle to Stannic, Randburg who becomes the title Holder with the Applicant still the owner.

8.8.4 The Respondent therefore just do not have the locus standi to be the Plaintiff or Applicant in this regard as the Respondent had ceded his rights in this regard.

AD APPLICATION: SUMMARY JUDGMENT

AD ARREARS

9.The Court erred by not taking the following into consideration:

9.1 Ad paragraph 8.2 of the Particulars of Claim states that the principal debt was R886,841.98.

9.2 Ad paragraph 8.3 states that:

9.2.1 The total amount owed was R1,355,227.98;

9.2.2 Seventy one consecutive installments of R 16,946.12 was to be paid;

9.2.3 A final installment of R132,053.40 was to be paid.

9.3 In ad paragraph 11.1 of the Particulars of Claim the Respondent claims that the arrears due was R111,449.71 on 18 February 2022.

9.4 The Respondent in this amount therefore includes the final payment of R132,053.40.

9.5 If referring to any arrear amount during the time of the agreement the Respondent is not entitled to refer to the final payment of R132,053.40.

9.6 At any relevant time during the agreement when the Applicant could have fallen in arrears a demand to come in line with the installments could not include the final payment.

9.7 A demand could only refer to normal payments in arrears as the inclusion of the final payment would have the result that even if the Applicant is only one monthly installment in arrears a demand to come up to date will be an amount of RI

9.8 The Respondent relies on the alleged arrears to issue summons which alleged arrears are set out in annexure D to the Particulars of Claim which stated that:

9.8.1 Arrears are R111,449.71;

9.8.2 Installment to be paid is R 15 898,44.

10. The court erred by not taking the following discrepancies into consideration:

10. 1 If the final installment is subtracted from the amount of the alleged arrears of R111,449.71 the Applicant was in advance with payments in the amount of R20,603.69.

10.2 The suspicion that the Applicant was not in arrears is confirmed in the same annexure D to the Particulars of Claim.

10.3 When annexure D was issued on 9 February 2022 the installments to be paid was R15,898,44.

10.4 Annexure B to the Particulars of Claim, being the agreement, states that the installments were R 16,946.12.

10.5 The installment amount has therefore decreased with R1,048.12.

10.6 A decrease in an installment amount is only possible when payments are upfront and the installments are recalculated to establish the amount to be paid monthly to finalize the contract in time.

10.7 It is here strongly argued that the Respondent calculated the outstanding amount excluding the final payment which then makes the drop in the installments understandable.

10.8 If the recalculation of the installments are done automatically as expected, the credit of R20,603,609.00 is understandable.

10.9 The Respondent was clearly supposed to issue summons on or during February 2022 to make annexure D reliable.

10.10 The Respondent, as reflected in the Particulars of Claim, attempt to issue summons on 28 April 2022, already nearly 3 months after the issuing of annexure D.

10.11 This date was nevertheless deleted and changed to 26 June 2022, now 2 months later and nearly 5 months after the date on annexure D.

10.12 This lack of diligence at a time blamed on the resignation of a secretary, became extremely important.

10.13 During the time annexure D was compiled and the summons were issued and served on the Appellant the Appellant had bona fide paid an amount of R76,000.00.

10.14 This is the equivalent of R119,000.00 per month and R2,054.00 more than the installment as set out in annexure D.

10.15 This also explains why the monthly installment had decreased.

10.16 For the Respondent the situation became worse as the Appellant indeed kept on paying until he made his answering affidavit to oppose the application for summary judgment and paid a further amount of R96,000.00.

10.17 A total amount of R172,000.00 has been paid by the Appellant before the application for summary judgment was brought.

10.18 The Respondent nevertheless sticks to annexure D dated 9 February 2022 alleging the arrears were R11,449.71.

10.19 It can also be argued that there can be doubt if annexure D is applicable to the Appellant.

10.20 It is also now noticed that except what is already set out in the Heads of argument that the summons is allegedly signed by an attorney from Gauteng in Mahikeng, it is now noticed that the Particulars of Claim is signed by an unidentified person.

10.21 Page 14 of the Particulars of Claim indicates that a signature was put on the Particulars of Claim above the heading: HACK STUPPEL & ROSS.

10.22 There is also a signature above the heading alleging: AN ATTORNEY DULY CERTIFIED, ADMITTED AND ENROLED....

10.23 The person who signed the POC and certificate is never identified.

10.24 It is conceded that the decrease in the installment as set out in annexure D to the Particulars of Claim as well as was the signature on the Particulars of Claim not directly argued up to now.

10.25 This is nevertheless documentation supplied by the Respondent.

10.26 Regarding the unidentified signatures on the Particulars of Claim it is argued that the Registrar also overlooks this irregularity as well as the Applicant.

10.27 Regarding the decreased installment on annexure D it is argued that again annexure D was supplied by the Respondent and although noticed now, it is not a new fact and can the Respondent refer thereto.

10.28 What is indeed very disturbing is the fact that neither in the Particulars of Claim nor the Application for summary judgment did the Respondent just attach a statement of payments made by the Applicant.

10.29 The Applicant clearly in his Plea stated that he is not able to admit or deny payments made, shortfall (if any) etcetera

10.30 The Applicant also pleaded that this is due to the fact that the Respondent failed to send out statements and therefore for a period of more than five years.

10.31 The bona fides of the Applicant is reflected in his payments on record preceding the four months before summons which is more than four months installments and his continuous payments to the amount of R1 76,000.00 until summary judgment was eventually filed.

Ad summary of annexure D to the POC:

10.31.1 Arrears on 1st February 2022

R111,469.00

10.31.2 Outstanding amount on 1st February 2022 R3071197.79

10.31.3 Installments left until contract expires

on 1st July 2022: 5 x R15 898,44 R79,492.20

10.31.4 Total of arrears and outstanding amount. R290.961 .20

10.31.5 Shortfall at the end of the contract if the

Applicant performs in terms of annexure D R16.236.59

10.32 Again, at least the amount of R76,000.00 was paid before summons were issued over a period of four months and was the alleged arrear amount moot with the R76,000.00.

10.33 The application for summary judgment was moot in the amount of R172,000.00.

10.34 This is made worse but perhaps understandable due to the fact that the application for summary judgment states that the affidavit of Ayesha Hoosen wilt be used in the support of the application for summary judgment but it then was found that the affidavit of Maureen Ramitoola was used.

10.35 Again it is conceded that it only now came under the attention of the Appellant that no name appears above the signature of the deponent but only a reference number.

10.36 It is therefore argued that the Respondent failed to prove that there was any arrears at the time summons were issued which is the crux or founding stone of the summons.

AD IF RESPONDENT WAS A REGISTERED CREDIT PROVIDER.

11.

11.1 Section 41 of the National credit Act no 34 of 2005 clearly states that an institution providing credit must be a Registered Credit Provider.

11.2 There can be no misunderstanding that what is meant is that credit provider must be registered as such when the credit was provided.

11.3 In this regard the Respondent relies on annexure A to the Particulars of Claim which states that the Respondent was a Registered Credit Provider when the summons was issued and therefore on 24th June 2022.

11.4 It shall be noticed that annexure A to the Particulars of Claim allege that the Respondent was a Registered Credit Provider for the period of 1 August 2021 up to 1st July 2022.

11.5 It shall be noticed that:

11.5.1 Annexure A is issued exactly for a year;

11.5.2 Is issued for Standard Bank- Johannesburg Standard Bank Centre;

11.5.3 The first objection made in this regard was that the Respondent was one of the biggest financing houses in the country and therefore shall be a Registered Credit Provider;

11.5.4 The number on annexure B, the contract, is the same as the number on annexure A and therefore proves that the Respondent was indeed registered as a National Credit Provider.

11.6 It is common knowledge that a credit provider as the Respondent only once register as a National Credit Provider and is then supposed to register yearly as such.

11.7 If the Respondent had acted accordingly, the easiest way out was to file a certified copy of the 2016 registration document either to the affidavit in support of the application for summary judgment or even

to the Heads of Argument in support of the application for summary judgment to which it would have been difficult for the Appellant to object to.

AD IF THE RESPONDENT WAS REPRESENTED WHEN ANNEXURE B WAS CONCLUDED.

12.

12.1 In ad paragraph 4 of the Particulars of Claim the Respondent stated that with the conclusion of annexure B the Respondent was represented by a duly authorized person.

12.2 It was then established that a certain Saunders presumably a salesman, signed the quotation but not in a representative capacity of anybody.

12.3 The terms and conditions of annexure B was signed by nobody not even the Applicant.

12.4 The denial of the Applicant that the Respondent, in the absence of any contrary information, that the Respondent was represented therefore seemed to be correct.

12.5 The Respondent therefore relies for his action on an unsigned document.

AD CREDIT ASSESSMENT

13.

13.1 In ad paragraphs 6 and 7 of the Particulars of Claim the Respondent alleged that a proper credit assessment was done in terms of the National Credit Act which is a prerequisite for the conclusion of annexure B.

13.2 Being 6 years back and a taxi owner who buys taxis (which the Respondent knew) the Respondent clearly states that he can't admit or denies it and therefore denies it.

13.3 The Respondent attacks this denial but instead of just add the assessment done to the affidavit in support for summary judgment.

13.4 The denial therefore still stands.

AD LOCUS STANDI OF THE RESPONDENT

14.

14.1 In terms of clause 1.5 of annexure B to the Particulars of Claim it is clear that the Respondent has the right to cede his rights in terms of annexure B

14.2 Annexure C to the Particulars of Claim clearly shows that the Respondent had on or during 5 August 2016 cede his rights to Stannic by making Stannic the Title Holder which the Plaintiff must be to have locus standi to issue summons in his capacity as the person to whom the rights of the Respondent was ceded to.

AD PRAYERS

15.

15.1 On any argument it can't be in dispute that the Appellant had paid an amount of between R1,100,000.00 and R1,200,000.00 million Rand to the Respondent.

15.2 The Respondent's prayers are nevertheless to:

15.2.1 Take the vehicle back;

15.2.2 To retain all monies paid by the Appellant;

15.2.3 Damages to the vehicle;

15.2.4 Claim unearned finance charges. (Which can't be claimed);

15.2.5 Interest on the damage.

15.3 The Respondent don't even in his prayers tender, as he should do, to pay back to the Applicant any surplus after the vehicle has been sold.

15.4 Even a laymen will realize that a vehicle bought for a principal amount of R886,841.98 according annexure B and then an amount paid back as set out above, that there will be a surplus when the vehicle is sold as the Respondent is obliged to do.

15.5 For disturbing reasons unknown, the Respondent clearly has the intention to keep the vehicle get it renovated and also claim that amount spent from the Applicant.

SUMMARY WHY THE COURT IS REQUESTED TO GRANT LEAVE TO APPEAL

16.

16.1 The Respondent completely failed to convince the Court:

16.1.1 Why the Court must grant condonation;

16.1.2 Prove any arrears to entitle the Respondent to issue summons;

16.1.3 Failed to prove that the Respondent was a Registered National Credit Provider when summons was issued;

16.1.4 Failed to prove that the prescribed credit assessment was done;

16.1.5 Failed to prove that a valid contract came into place between the parties;

16.1.6 Failed to prove that the Respondent had locus standi to issue summons against the Applicant;

16.1.7 Failed to tender any surplus. after the vehicle was sold, back to the Applicant.

16.1.8 Failed to abide by the clear prescriptions as set out in the National Credit Act

16.1.9 The Respondent has therefore failed to convince the Court that on a preponderance of probabilities that he was entitled to inter alia claim the restoration of the vehicle back to him.

17.

It is sincerely argued that it is in the interest of justice that the Applicant is given the opportunity to prove to the Court that he is entitled to keep his vehicle and for the Respondent to attempt to prove that he is entitled to the prayers in the summons.

18.

It is convincingly argued that the parties will reach an agreement once leave to appeal is granted instead of proceeding with the appeal.

19.

It must be remembered that most of what is happening here was caused by the negligent matter the Respondent handled this matter.

BE PLEASED TO TAKE FURTHER NOTICE that it will be argued on behalf of the Applicant that there are reasonable grounds of success on appeal, that leave to appeal be granted and the costs of this application to be cost in the appeal.

SIGNED at POTCHEFSTROOM on the 23rd day of May 2024"

[3] In a document dated 22 July 2024, The Standard Bank of South Africa Limited cited as the respondent, filed with the Office of the Registrar on 24 July 2024, 'Request for Reasons in terms of Rule 49 (1) (c) of the Uniform Rules of Court'. This documents reads thus: "Be Pleased To Take Notice That the Respondent, in terms of Rule 49 (1) (c) of the Uniform Rules of Court and paragraph 7 of the Summary Judgment order granted by the Honourable Mr. Justice Hendricks JP in favor of the Respondent on 09 May 2024 under the above case

number and in circumstances where, the Appellant, has failed to request for the reasons, hereby takes the liberty to request for the reasons for the summary judgment order. Be Pleased To Take Further Note That the application for leave to appeal is set down for hearing on 11 October 2024 at 10:00 or so soon thereafter as counsel may be heard.”

- [4] Ten (10) court days from 9 May 2024 was 23 May 2024 (excluding the first day and including the last day) on or before which a request for reasons for the order should have been made. It behoves no argument that the appellant, Mr. Trevor Collin Johnson, should have applied for reasons for the order, which he failed to do. Be that as it may, here follows the reasons for the order this Court made on 9 May 2024.
- [5] On 15 June 2016 the Standard Bank of South Africa Limited (the applicant in the application for summary judgment) and Mr. Trevor Collin Johnson (the respondent in the application for summary judgment) concluded an installment sale agreement, for the purchase of a 2015 Mercedes Benz V-250 Bluetech motor vehicle. The applicant advance the required finance (credit) for the purchase of the said motor vehicle. It was alleged that the respondent breached the terms of this installment sale agreement by failing to effect full and punctual payment of the installments due in terms of the agreement. Summons was issued initiating the institution of an action. The respondent entered an appearance to defend and belatedly filed a plea after being ipso facto barred. The applicant (plaintiff in the action) launched an application for summary judgment, which was opposed and which served before this Court on 9 May 2024 culminating in the order granted in paragraph 1, supra. This application was filed three (3) days late and an application for condonation for the late filing and service of the summary judgment application was made. Based on good cause shown to exist, the requested condonation was granted. It need to be mentioned that there is a challenge based on reckless credit lending, and it is averred that the applicant was not registered as a credit provider during June 2016.
- [6] The installment sale agreement pertinently state that ownership of the said motor vehicle will reside in the applicant, until the respondent fulfill all his financial obligations towards the applicant. It was agreed that the installments due must be promptly and punctually paid, failing which, it will constitute a breach of this agreement. It is common cause that the applicant complied with its terms of this agreement and the respondent was placed in possession of the said motor vehicle. There is proof that at the time of the institution of the action, the respondent was in arrears and did not honor his obligations in terms of the installment sale agreement.
- [7] The respondent raised technical objections, inter alia that the applicant was not duly represented; that it was denied that the applicant was a registered credit provider during June 2016; he denies the implied terms of the agreement; and that the applicant is the title holder of the said motor vehicle but instead Stannic, the motor vehicle finance branch of the applicant, is the holder in title of the said motor vehicle; that default in any of the installment payments will result in a claim for repayment of the outstanding balance; and that in the event of a dispute of entitlement to take default steps, he will remain liable to

continue with payment of the installments due. Upon a careful consideration of all the objections raised, this Court found none to be meritorious

- [8] Insofar as the contention that the respondent defaulted and was in arrears with the repayment of his monthly installments are concerned, he states that he cannot admit or deny the arrears. According to him, there is however an unexplained difference in the amounts as stated on the certificate of balance and the arrears as at the date of issuing of the summons. He submitted that he made certain payments, after issuing of the summons.
- [9] It is quite obvious that as a result of the default in paying the monthly installments promptly and timelessly, the applicant has a right to cancel the agreement, which right cannot be removed upon belated and/or subsequent cure of any breach, like in this instance the belated payments made. The installment sale agreement that existed between the applicant and the respondent was validly cancelled.

See: Boland Bank v Pienaar 1988 (3) SA 618 (A).

Furthermore, it is incumbent upon a respondent resisting summary judgment, to put up a valid and bona fide defence, which the respondent fails to do.

See: Breitenbach v Fiat SA (Edms) Bpk 1976 (2) SA 226 (T).

Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A).

Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture 2009 (5) SA 1 (SCA).

NGPS Protection and Security Services CC & Another v First Rand Bank Ltd 2020 (1) SA 494 (SCA).

- [10] It behoves no argument that a pre-agreement assessment was validly conducted. There is no case made out for reckless credit lending by the applicant. Apart from requiring additional documentation, the averment of a properly conducted pre-agreement assessment is not denied by the respondent, who bears the onus to prove reckless credit lending.

See: Sterrenberg v First Rand Limited

[2023] ZANWHC 37 (6 April 2023).

- [11] The applicant prayed for cancellation of the installment sale agreement, the return of the motor vehicle, and retention of the monies paid. Damages will be later assessed and computed. An analytical analysis of the crux of the objection raised by the respondent, technical objections aside, seems to be that the actual breach of the installment sale agreement is not denied, but that he has a gripe with the fact that the motor vehicle is to be repossessed, whereas an alternative arrangement or agreement can be reached between them. This is nothing more than a plea for some indulgence to be granted to him. This does not in the very least constitute a valid defence.
- [12] It is for the aforementioned reasons, inter alia, that an order was granted in the terms as set out in paragraph 1 above.

R D HENDRICKS

JUDGE PRESIDENT OF THE HIGH COURT,

NORTH WEST DIVISION, MAHIKENG

- [1] Absa Bank Ltd vs Botha NO and Others 2013 vol 5 SA 563 GNP
- [2] Justice of the Peace and Commissioners of Oath Act 16 of 1963
- [3] Absa Bank Ltd vs Botha NO and Others 2013 Vol 5 SA 563 GNP
- [4] Van Wyk v Unitas Hospital [2007] ZACC 24; 2008 (2) SA 472 CC at 477E-G
- [5] Standard General Insurance co Ltd v Eversafe (Pty) Ltd 2000 (3) SA 87 at 93G

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ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZANWHC/2024/237.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/johnson-v-standard-unknown-topic-anwhc-2024>

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