

SOUTH AFRICA / JUDGMENT

Motor Finance Corporation (Pty) Ltd v Prinsloo (1830/2011) [2011] ZAECGHC 51 (22 September 2011) [2011] ZAECGHC 51

COURT

Eastern Cape High Court, Grahamstown

BEFORE

J.E Smith

CASE / FILE NUMBER

1830/2011

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IN

THE HIGH COURT OF SOUTH AFRICA

EASTERN

CAPE DIVISION, GRAHAMSTOWN

Case no: 1830/2011

Date Heard:15/9/11

Date Delivered:22/9/11

In

the matter between:

MOTOR

FINANCE CORPORATION (PTY) LTDAPPLICANT

Versus

JONNY

PRINSLOO

.....RESPONDENT

JUDGMENT

SMITH J:

[1] The Plaintiff applies for summary judgment as follows:

- (a) An order confirming cancellation of the written agreement entered into between the parties on 15 January 2010 in respect of the sale of a motor vehicle, namely a 2003 Mercedes Benz ML DCi;

- (b) An order authorizing the Sheriff to take possession of, and deliver the aforesaid motor vehicle to the Plaintiff; and other ancillary relief.
- [2] The Plaintiff is the financier and owner of the aforesaid vehicle which the Defendant had purchased from the dealer, namely Motorland Subaru, East London on 15 January 2010.
- [3] It is not in dispute that the Defendant has defaulted in respect of the payment of his monthly installments.
- [4] The Defendant has averred in his opposing affidavit that:
 - (a) It was an implied term of the agreement that the vehicle was of a good quality, in working order and free from latent defects;
 - (b) It was also an implied term that the vehicle was usable and would be durable for a reasonable period of time;
 - (c) That he had been informed by the salesman who sold the vehicle to him that the previous owner was a woman, obviously with the intention to create the impression that the previous owner was a cautious driver and that the vehicle had been well cared for;
 - (d) During September 2010 and thereafter the vehicle suffered major mechanical problems which included defective heli-coils, fuel injector, globe plugs and diesel pump. Because of these defects he has not been able to use the vehicle since September 2010. During October 2010 he cancelled the debit order in respect of the monthly installments. He had also since discovered that the vehicle had been involved in a rear-end collision. This was also not disclosed to him at the time of the purchase;
 - (e) During November 2010 his attorneys addressed a letter to the Plaintiff on his instructions wherein these problems were brought to their attention and they were requested to suggest how the matter could be resolved;
 - (f) The defects existed at the time of the purchase and had not been disclosed to him; and
 - (g) He also intends to pursue a counterclaim against the Plaintiff.
- [5] The purpose of summary judgment is not to deprive a litigant who has a triable and bona fide defence the opportunity to pursue that defence in court, but is rather aimed at preventing litigants whose sole aim is to delay proceedings on the basis of a contrived and bogus defence, from frustrating a Plaintiff's claim. See: *Joob Joob Investments v Stock Mavundla* 2009 (5) SA 1 (SCA) at paragraphs 31-33.
- [6] A Defendant who wants to resist summary judgment has to set out facts, which if proven at the trial in due course, will constitute a valid defence. The material facts relied upon must be fully disclosed so as to satisfy the court that he indeed has a bona fide defence.

- [7] The court will at this stage of the proceedings not consider the merits of the defence. The enquiry is limited to a consideration of whether or not those facts, if proven at the trial in due course, will constitute a comprehensive and valid defence to the Plaintiff's claim. See: *Standard Bank of South Africa v Friedman* 1999 (2) SA 456 (C) at 461 G-I.

A defendant is not required to set out these facts with the same precision which is required of pleadings. See: *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) at 426 C-F.

- [8] Mr Koekemoer, who appeared on behalf of the Plaintiff, submitted that the Defendant has failed to set out sufficient facts to support the contention that the alleged defects were present at the time of the purchase.
- [9] Furthermore, so Mr Koekemoer argued, in terms of the agreement the Defendant had undertaken to inspect the vehicle for defects before the delivery and had in fact confirmed that the vehicle was in good order at the time of delivery. The Defendant is under these circumstances precluded from relying on the defence which he has proffered.
- [10] I understand the pith and substance of the Defendant's defence as it appears from the opposing affidavit, to be as follows:
- (a) At the time that he purchased the vehicle the salesman had represented to him that the previous owner was a cautious driver and that the vehicle had been well cared for;
 - (b) The salesman failed to disclose that the vehicle had been involved in a collision;
 - (c) The salesman failed to disclose serious latent defects which existed at the time and which subsequently (a few months after the purchase) resulted in catastrophic mechanical failure, effectively rendering the vehicle useless;
 - (d) That it was an implied term of the agreement that the vehicle was in good working order and was free of latent defects.
- [11] I agree with Mr Kincaid who appeared for the Defendant, that these facts, if proven at the trial in due course, would constitute a valid and comprehensive

defence to the Plaintiff's claim. It is not necessary for me to consider at this stage whether or not the Defendant will be able to prove at the trial that the alleged defects existed at the time of the purchase. That would, in my view, effectively amount to an assessment of the merits of the defence.

- [12] While I agree with Mr Koekemoer that the Defendant has failed to elaborate on his averment that he has a counterclaim against the Plaintiff, in the light of my findings in respect of his defence, it is not necessary for me to consider that issue. In the event on the basis of the facts disclosed by the Defendant he may well have a counterclaim for a cancellation of the contract and return of the vehicle, alternatively a price reduction on the basis of the *actio quanti minoris*. I agree with Mr Kincaid's submission that on the basis of the facts averred by the Defendant there would be a number of aedilitian remedies available to him.

[13] In the result the following order shall issue:

1. The summary judgment application is refused;
2. The Defendant is granted leave to defend the main action and is ordered to file his plea, if any, within 10 (ten) days from the date of this order;
3. Costs shall be in the cause.

J.E SMITH

JUDGE OF THE HIGH COURT

Appearances

Counsel for the Applicant : Advocate Koekemoer

Attorneys for the Applicant : Neville Borman and Botha

22 Hill Street

GRAHANSTOWN

6140

Tel: 046 622 7200

Ref: J Jagga

Counsel for the Respondent : Advocate Kincaid

Attorneys for the Respondent : Deon Stander Attorneys

110 High Street

GRAHAMSTOWN

Ref: Deon Stander/us/P002

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Prepared on 11 October 2026 · Esheria