

SOUTH AFRICA / JUDGMENT

Nedbank Limited v Varoyi (9102/2024)

[2025] ZAWCHC 241 (3 June 2025)

[2025] ZAWCHC 241**COURT**

Western Cape High Court, Cape Town

BEFORE

P. S. Van Zyl

CASE / FILE NUMBER

9102/2024

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****(WESTERN CAPE****DIVISION, CAPE TOWN)****Case number: 9102/2024****In the matter between:**NEDBANK
LIMITED
Plaintiff
and
SIMPHIWE
VAROYI
Defendant**JUDGMENT****DELIVERED ON 3 JUNE 2025****VAN ZYL AJ:****Introduction**

1. This is an opposed application for summary judgment. The plaintiff's claim arises from the defendant's breach of a written credit agreement concluded in November 2017, in terms of which the defendant purchased a motor vehicle described as a 2015 Hyundai H-1 2.5 CRDI (VGT) Wagon A/T.

2. It is common cause that the agreement is standard in form, and compliant with the provisions of the National Credit Act 34 of 2005 (“the NCA”). It provides that ownership of the vehicle would remain vested in the plaintiff until the full collectable amount was paid. The total collectable amount agreed to was R 713 714.62, payable by way of structured instalments over a defined term. The plaintiff duly delivered the vehicle to the defendant and complied with all of its obligations under the agreement and the NCA, including the delivery of pre-agreement statements and statutory notices.
 3. It is also not in dispute that the defendant has been in default of his obligations under the agreement since February 2020, and has failed to remedy the breach despite amendment of the repayment terms and the further indulgences granted by the plaintiff from time to time. The plaintiff, as it was entitled to do under the agreement, and after having met the NCA’s requirements, elected to cancel the agreement. It wrote off the vehicle, because it could not be traced. The plaintiff’s “Loss and write off report” attached to the summons indicates that the vehicle was not recovered.
 4. The plaintiff’s claim is for what remains outstanding under the credit agreement, as verified by a certificate of balance annexed to the summons. In terms of the parties’ agreement,[1] a certificate from one of the plaintiff’s managers, indicating the amount that is due and how it is calculated, is prima facie proof of the plaintiff’s claim in the event of legal action being taken.
 5. The plaintiff instituted action in May
2024. In November 2024 the defendant delivered a plea which contains various admissions and which, so the plaintiff submits, raises no bona fide triable defence – hence the application for summary judgment.
6. The defendant takes no issue with any of the procedural or technical aspects regulating summary judgment applications, but opposes the application on other bases, which will be discussed below.

The relevant legal principles

7. The purpose of Rule 32 is to afford a plaintiff, in clear cases where the defendant cannot demonstrate a bona fide defence, a remedy to avoid the costs and delay of unnecessary trial proceedings. The Court must be satisfied that the plaintiff’s claim is unassailable on the merits, and that the defendant’s opposition is not genuine, but merely a delaying tactic.
8. It is well-established through authorities such as *Breitenbach v Fiat SA (Edms) Bpk*,^[2] *Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture*,^[3] and *Tumileng Trading CC v National Security and Fire (Pty) Ltd*^[4] that the summary judgment procedure is aimed at distinguishing between genuine and sham defences. The Court is not obliged to indulge a defendant who merely seeks to delay the inevitable enforcement of a liquid claim.

9. In Breitenbach, the Court remarked that that summary judgment should not be refused on the basis of mere technical denials or hypothetical defences, but only where the defendant places before the court sufficient facts which, if proven at trial, would constitute a valid defence. The defendant must "fully disclose the nature and grounds of the defence and the material facts relied upon." [5]
10. The Supreme Court of Appeal ("SCA") in Joob Joob held that the rationale for summary judgment is to provide a remedy for a plaintiff who can demonstrate that the defendant's opposition is a stratagem for delay and that, in the words of Rule 32, "there is no bona fide defence and appearance is entered solely for the purpose of delay." The SCA affirmed that the procedure is not meant to deprive a defendant of his day in court, but provides a tool for the expeditious disposal of cases where the defendant has no reasonable prospect of success. [6]
11. Similarly, in Tumileng the Court restated that the amended Rule 32 does not represent a dilution of the summary judgment procedure, but continues to serve

its vital function in the expeditious disposal of claims where no genuine dispute of fact exists. The Court observed that summary

judgment may and should be granted where a defendant's plea consists only of "hollow denials, technical points, or hypothetical defences". The evidentiary burden on the defendant to set out the facts relied upon for any triable defence is a substantive one. [7] He needs to set out in clear and unequivocal terms the nature and grounds of any defence, with sufficient detail to satisfy the Court that such defence, if proven at trial, would be a legally cognisable defence. His prospects of success are irrelevant.

The defences raised in the defendant's plea

12. As indicated, the defendant admits both the existence of the credit agreement and the fact that a balance remains owing to the plaintiff. The defences advanced are limited to:
 - 12.1. a challenge to the correctness of the outstanding balance claimed, based on an allegation that the vehicle was repossessed and sold at auction, with the proceeds allegedly not allocated or accounted for by the plaintiff, and
 - 12.2. a request for a repayment arrangement under the agreement due to the defendant's changed health circumstances.
13. The plaintiff's claim in this matter is for a liquidated amount, and is supported by a certificate of balance which constitutes prima facie proof of the amount owed in the absence of cogent evidence to the contrary. The defendant's recourse, if genuinely aggrieved by the calculation of the outstanding balance, would be to place specific facts or figures before the Court.

14. In his plea, the defendant denies that the quantum of the outstanding balance as claimed by the plaintiff is correct.[8] The plea frames the issue as follows:
- “11. ...the defendant pleads that plaintiff repossessed the vehicle and sold it at an auction. The sale amount of the vehicle at an auction offset some of the outstanding balance.*
12. Notwithstanding the aforesaid however, the defendant admits that there is an outstanding amount owing towards settling the outstanding debt. The defendant is willing to enter into a repayment arrangement with the plaintiff subject to reasonable terms and conditions agreed to between the parties, taking into account the defendant’s changed health condition.”
15. This is repeated later in the plea, as follows:
- “17.the defendant pleads that the plaintiff repossessed the vehicle.*
18. ...the defendant denies that he refused to voluntarily surrender the vehicle. It was repossessed by the plaintiff and sold at an auction....”
16. This, in my view, amounts to a bare denial.[9] The defendant provides no factual foundation for his dispute of the quantum. He provides no details in support of the assertion – in the face of the plaintiff’s “Loss and write off report”
- that the vehicle was repossessed and sold at auction. At least some of these details would be within his knowledge, because he expressly pleads that he did not refuse to hand the vehicle over to the plaintiff.
17. In the case of repossession, moreover, the plaintiff would have had to comply with the notice, valuation, and statement requirements set out in section 127 of the NCA. There would have been a record of the documents generated throughout the process, which the plaintiff would have been obliged to provide to the court. It is clear from the papers that no such documents exist because, as the plaintiff avers, the vehicle was not repossessed. It was not sold at an auction, and there is no amount arising from any such sale that would reduce the plaintiff’s claim.
18. The affidavit opposing summary judgment is equally bare. Counsel for the defendant submitted that there was no time to take proper instructions from the defendant in relation to his affidavit, which was delivered one court day prior to the hearing of the summary judgment application. This submission does not assist the defendant. At the time of the drafting of his plea in November 2024 – a period in respect of which no time constraints have been alleged - he would surely have been able to provide instructions to his legal representatives in relation to when and how the vehicle had been repossessed.
19. I agree with the submission made by the plaintiff’s counsel that the defendant’s case in relation to the alleged auction falls woefully short of the threshold articulated in Breitenbach. In any event, the plaintiff’s claim is supported by a certificate of balance, which stands as prima facie proof in the absence of cogent evidence to the contrary:[10]

“[61] It was submitted on behalf of the defendant that, at best, the plaintiff’s first claim was based on a liquidated claim in money since the continuing covering bond “annexure a” itself did not constitute a liquid document within the meaning of the rule. That the bond document per se does not constitute a liquid document is undoubtedly correct. However, the bond document was not the sole basis of the first claim. The bond document (annexure a) was substantially amplified by the certificate of balance (annexure c). The latter, unlike the former, was a perfectly liquid document. It derived its liquid character from clause 9 of “annexure a”.

- [62] It was an express term upon which the parties had agreed that such a certificate (annexure c) would prima facie constitute proof of the defendant’s indebtedness to the plaintiff. Therefore, the onus of proving the contrary squarely rested upon the defendant. He unsuccessfully tried to show that the plaintiff had failed to comply with clause 9. Since he has failed to do so, the prima facie proof tendered by the plaintiff became conclusive proof, not only of the averments contained in the certificate, but also of the legal nature of the document itself.”
20. The defendant’s counsel submitted that the plaintiff approached the court in bad faith because the plaintiff had been well aware that the defendant wished to settle the matter. The matter should therefore not have been before the court at all for argument of an opposed application. I agree with the submission that the matter should not have reached summary

judgment

stage, incurring the costs of yet another day which the defendant will have to bear, but this is not only of the plaintiff’s

doing. The defendant’s willingness to enter into a repayment arrangement, motivated by his changed health circumstances, is neither a defence to liability nor a bar to the grant of summary judgment. The NCA does not entitle a debtor, post-default and cancellation, to dictate new repayment terms or postpone enforcement on the strength of personal circumstances and because of his wish to settle.

21. The defendant offers R1 500,00 per month to the plaintiff in what he regards as a reasonable rearrangement. The plaintiff disagrees, seeing that it will take years to pay off the debt, while interest continues to run. The in duplum stage will inevitably be reached. It is not for this Court to tell the plaintiff to conclude a contract with the defendant on the proposed basis. The defendant’s stance is essentially a plea ad misericordiam,[11] seeking to play on the emotions of the plaintiff and the Court. He is delaying the inevitable.

Conclusion

22. In the premises, I am of the view that the plaintiff has demonstrated a clear and enforceable claim founded on a written credit agreement, full statutory and contractual compliance, and the production of an undisputed certificate of balance. The defendant’s plea is devoid of any factual or legal foundation capable of sustaining a defence at trial.

23. It follows that the plaintiff is entitled to summary judgment in its favour. Counsel for the plaintiff handed up an updated certificate of balance at the hearing of the application. Judgment will thus be granted in the amount specified on the updated certificate.

Costs

24. The plaintiff's claim falls within the jurisdiction of the magistrates' court.[12] Costs will thus be awarded on the scale applicable in that court.

Order

25. In the circumstances, summary judgment is granted against the defendant in favour of the plaintiff for:

25.1. Payment of the amount of R208 324,96, plus interest thereon at 10,25% per annum, calculated and capitalized from 22 May 2025 to date of payment, both days inclusive.

25.2. Costs of suit, to be taxed on the magistrates' court tariff.

P. S. VAN ZYL

Acting Judge of the High Court

Appearances:

For the plaintiff:

Ms G. Slingers, instructed by Bornman & Hayward Inc.

For the defendant:

Mr N. Sibanda, instructed by Namane Attorneys Inc.

[1] Clause 17.4 of the agreement.

[2] 1976

(2) SA 226 (T).

[3] 2009

(5) SA 1 (SCA).

[4] 2020

(6) SA 624 (WCC).

[5] Breitenbach supra at 229F.

[6] Joob Joob supra para 32.

[7] See the discussion in Tumileng supra para 13ff.

- [8] The denial appears at various instances in the plea. In other instances the plaintiff's allegations are answered by the meaningless (and unhelpful, as far as the defendant's case is concerned) formulation that the defendant "neither admits nor denies" the position as pleaded by the plaintiff.
- [9] Counsel for the defendant's invocation of the Plascon Evans rule in relation to disputes of fact on the affidavits delivered in the summary judgment application does not assist the defendant.
- [10] ABSA Bank Ltd v Malherbe
- [2013] ZAFSHC 78 (16 May 2013) paras 62-63. Emphasis supplied.
- [11] See Jili v FirstRand Bank Ltd t/a Wesbank 2015
- (3) SA 586 (SCA) para 7.
- [12] The parties' agreement provides in clause 20 that legal proceedings may be brought in the High Court regardless of the amount claimed.

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