

SOUTH AFRICA / JUDGMENT

Volkswagen Financial Services v Baley (3515/2017) [2017] ZAGPPHC 653 (5 October 2017) [2017] ZAGPPHC 653

COURT

North Gauteng High Court, Pretoria

BEFORE

E Molahlehi

CASE / FILE NUMBER

3515/2017

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REPUBLIC
OF SOUTH AFRICA
IN THE HIGH COURT OF
SOUTH AFRICA
(GAUTENG DIVISION,
PRETORIA)

Case

number: 3515/2017

Not

reportable

Not

of interest to other judges

Revised.

5

October 2017

In

the matter between:

VOLKSWAGEN
FINANCIAL
SERVICES PLAINTIFF
And
MATTHEW
JOHN
BALEY DEFENDANT

JUDGMENT

MOLAHLEHI J

- [1] This is an application for a summary judgment in terms of which the plaintiff seeks an order against the defendant for the payment of the sum of R317 693.68. The plaintiff has already repossessed the motor vehicle in question and sold it. The purpose of this claim is to recover the short fall of the purchase price following the sale of the motor vehicle.
- [2] The plaintiff contended that after breaching the contract, the defendant voluntarily handed back the motor vehicle. Although he conceded to the breach of the contract, the defendant contended that the plaintiff was not entitled to cancel the agreement because they had concluded a further agreement in terms of the Voluntary Assistance for Customer's plan.
- [3] It is common cause that, in terms of the brief background facts, the parties concluded an installment agreement in terms of which the plaintiff sold to the defendant an Audi A6 Quattro motor vehicle. It is also common cause that the defendant breached the contract by failing to pay the monthly installment.
- [4] On 30 October 2015, following the failure by the defendant to pay the monthly installments, the plaintiff repossessed the motor vehicle. After that and almost a year later the plaintiff informed the defendant on 3 October 2016 that it had sold the vehicle and was intending to claim from him the shortfall in terms of the purchase price of the motor vehicle.
- [5] On 3 November 2016, the plaintiff dispatched the notice in terms of s 129 of the National Credit Act,[1] in terms of which the defendant was amongst other things called upon to pay the outstanding amount of R317 693.68.
- [6] The plaintiff served the summons on 3 March 2017, defendant having failed to comply with the above notice. The defendant then entered

appearance to defend the action on 15 March 2017. And following that the plaintiff served the present application on the defendant on 6 April 2017.

- [7] The requirements for a successful application of a summary judgment are now well established in our law. It is trite that in order to satisfy those requirements for an application for a summary judgment the plaintiff has to comply with the provisions of rule 32 (1) of the Uniform Rules of the High Court (the Rules). The key aspect in this regard is that the plaintiff has to:
- i. verify in an affidavit the facts supporting the cause of action and the amount, if any,
 - ii. state in the affidavit that in his or her opinion the defendant has no bona fide defence to the action and,

iii. that the notice of intention to defend is entered to delay the finalisation of the resolution of the dispute.

[8] To succeed in his or her defence against the summary judgment application, the defendant has to positively state in an opposing

affidavit that he or she has a bona fide defence to the action. The nature and grounds of a defence should be fully set out in the affidavit and this includes the material

facts

relied upon by him or her in support of the defence.

[9] The enquiry to be conducted by the court in determining whether the defendant has established a defence to qualify for leave to defend the action entails the following:

“(a) whether the defendant has “fully” disclosed the nature and grounds of his or her defence and the material facts upon which it is founded, and

(b) whether on the facts so disclosed the defendant appears to have, as to either the whole or part of the claim, a defence which is both bona fide and good in law.”

[10] As stated in the case of *Maharaj vs Barclays National Bank*, [2] the enquiry does not entail consideration of whether the defendant has dealt exhaustively with the facts and the evidence

relied upon to substantiate the defence but rather that he or she must at least disclose a defence and the material facts upon which it is based on with sufficient particularity and completeness to enable the court to decide whether the affidavit discloses a bona fide defence.

[11] In the present matter it should firstly be noted that the defendant does not deny breach of the contract on the ground that he defaulted in his monthly installment on the repayment of the purchase price of the motor vehicle.

[12] His defence is based on the offer that the plaintiff is alleged to have made after the breach of the contract. The offer made according to him was based on the Voluntary Assistance for Customer plan. The terms of the offer would according to him come into operation, “if elected and agreed to by the parties.”

[13] He does not however, aver that any of the parties made the election to be bound by the terms of the agreement of the Voluntary Assistance

plan. The essence of his contention is that the plaintiff misled him into surrendering the motor vehicle while he was still

busy negotiating on the plan. He further contended that he had secured a buyer who could have bought the car at a higher price than that of the plaintiff.

[14] In my view the defendant has failed to make out a case that he has a bona fide defence which is good in law to deserve leave to defend the plaintiff's claim for summary judgment. On his own version the

Voluntary Assistant plan was never agreed to between the parties. In fact even the building blocks for such a plan had not been put in place for a period of close to a year. In this respect the relevant documentation had not been assembled.

[15] Accordingly, I find that the plaintiff stands to succeed in its application for summary judgment.

Order

[16] In the premises the premises the following order is made:

1. The defendant shall pay the plaintiff the sum of R317 693.68.
2. The defendant shall pay interest on the above amount at 10.5% per annum from 3 March 2017 to date of final payment.
3. The defendant shall pay the costs of the suit.

E Molahlehi

Judge of the High Court of South Africa; Johannesburg.

Representation:

For the Plaintiff: Adv K Meyer

Instructed by: C F Coller Inc.

For the Defendant: In person

Heard: 17 August 2017

Delivered: 05 October 2017

[1] Act number 31 of 2005

[2] 1976(1) SA 418 (A).

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Prepared on 9 October 2026 · Esheria