



23/8/17

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IN THE NORTH GAUTENG HIGH COURT, PRETORIA

[REPUBLIC OF SOUTH AFRICA]

CASE NUMBER: 63008/ 16

- (1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO
(3) REVISED.

23³ / 8 / 2017
DATE


SIGNATURE

In the matter between:

In the matter between:

STANDARD BANK OF SA LTD

APPLICANT

And

RAYMOND NDITSHENI RATHIDILI
RESPONDENT

JUDGMENT

MAVUNDLA, J.

[1] This is an opposed application for summary judgment against the defendants, for:

(a) An order confirming cancellation of the agreement;

- (b) The defendant be ordered to return the vehicle/ asset being a certain, 2014 JAQUAR XF 2.0 14 177KW PERTOL PREMIMIUM LUXURY, with ENGINE NUMBER: 14061399101204PT and CHASSIS NUMBER: SAJAC06N8DPU00465, to the plaintiff, and in the event of the defendant failing t or refusing to do so the Sheriff be authorised to attach and remove the vehicle wherever it may be found and hand same over to the plaintiff.
- (c) An order for payment of R519 261.93 plus interest AT THE RATE OF 13.5% less the salvage value in terms if the aforesaid order which is postponed *sine die*;
- (d) Cots of suite; and
- (e) Further and/or alternative relief.

[2] It is common cause that the parties concluded an instalment sale agreement, in terms of which the defendant purchased the aforementioned mot vehicle from the plaintiff, for the sum (including VAT and finance charges) of R720 438. 60, to be liquidated in 71 payments of R10 006. 05 each monthly intervals beginning on 10 May 2014 and a final payment on 10 April 2020.

[3] According to the particulars of claim, the defendant was in arrears in an amount of R57 420. 18 as on the 11 July 2016. As the result the plaintiff, after having complied with the provisions of s129 of Credit Agreement Act, caused summons to be issued and served on the defendant on the 7 Septembers 2016. Notice to defendant was entered on 9 September 2016. The plaintiff applied for summary judgment on 27

September 2016. The plaintiff contended that the defendant does not have a *bona fide* defence to its claim.

[4] In opposing the summary judgment application, the defendant contended that:

- 4.1 The notice in terms of s129 of the NCA was dated 19 July 2016;
- 4.2 On the 26 August 2016 defendant paid an amount of R15 000. 00;
- 4.3 The application for summary judgment was served on the 27 September 2016;
- 4.4 On 9 November 2016 defendant paid an amount of R65 000. 00;
- 4.5 the defendant filed his opposing affidavit on 13 March 2017;
- 4.6 The summary judgment was sought much later than is required;
- 4.7 the deponent to the affidavit in support of the application for summary judgment, merely stated that she verifies the cause of action, specifically pertaining to cancellation of the respective agreements and return of the vehicles /assets and that she swears positively by virtue of her direct dealing relating to the subject matter, without disclosing how she qualifies for her dealing with the specific contract;
- 4.8 the deponent has failed to verify neither the amount claimed and the basis for the return of the vehicle.
- 4.9 the amount outstanding at the issue of the summons was settled by the defendant.

[5] It is trite that for the defendant to successfully resist summary judgment he must satisfy the court that he has a *bona fide* defence to the claim. The court need only determine whether the defendant (a) has fully disclosed the nature

and grounds of his defence and the material facts upon which his defence is premised; (b) whether the facts so disclosed, the defendant appears to have, as a whole or part of the claim, a defence which is bona fide and good in law; *Vide Maharaj v Barclays Bank Ltd* 1976 (1) SA 418 (A) at 426AB.

[6] According to the plaintiff, the defendant was in arrears in an amount of R57 420. 18 as on 11 July 2016. On 26 August 2016 defendant paid an amount of R15 000. 00. The affidavit in support of the summary judgment application was deposed to on the 13 September 2016. It stands to reason that by then the arrears had been reduced by as much as the amount of R15 000. 00. On 9 November 2016 defendant paid an amount of R65 000. 00, as a result extinguishing the arrears of R57 420. 00. In my view, the assertion by the deponent to the summary judgment application affidavit that she verified the cause of action cannot be correct, in the circumstances.

[7] In my view, the further point raised by the defendant that there are no facts stated by the plaintiff's deponent to the affidavit seeking summary judgment, upon which she has knowledge to the financial section, which would be dealing and monitoring payments towards the accounts. In my view, there is merit in the defendant's contention that he has a *bona fide* defence to the plaintiff's claim.

[8] I further take into account that the summary judgment application came before this Court almost a year later than when it was initially launched on the 27 September 2016. I see no reason why in the circumstances of this case that the

summary judgment should be granted. I am satisfied that the defendant has disclosed a *bona fide* defence to the plaintiff's claim namely that he is not in arrears, warranting the cancelation of the agreement.

[9] In the result I make the following order:

1. That the application for summary judgment is dismissed;
2. That the defendant is granted leave to defend.
3. That the costs of the summary judgment application shall be costs in the course.



N.M. MAVUNDLA

JUDGE OF THE HIGH COURT

DATE OF JUDGMENT: 24 /08 / 2017

APPLICANT'S COUNSEL : HAMMOND POLE MAJOLA.

INSTRUCTED BY : STUPEL & BERMAN INC

DEFENDANT'S COUNSEL: ADV. M. MKHATSHWA

INSTRUCTED BY : DES NAIDOO ATTORNEYS