



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

Case Number: 62789/2020

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: YES/NO
- (3) REVISED
- DATE: 14 SEPTEMBER 2021
- SIGNATURE:

In the matter between:

FIRSTRAND BANK LIMITED t/a WESBANK

Plaintiff/Applicant

And

**MESHOMO ENGINEERING AND SUPPLY (PTY)
LTD**

Defendant/Respondent

REASONS/JUDGMENT

JANSE VAN NIEUWENHUIZEN J

[1] The plaintiff instituted action against the defendant for the cancellation of an Instalment Sale Agreement (“the Agreement”) entered into between the parties and for the return of the vehicle that formed the subject matter of the Agreement.

[2] The defendant defended the action and upon the filing of its plea, the plaintiff filed this application for summary judgment.

[3] Having heard the matter, I granted summary judgment and indicated that the reasons for the order will follow. These are the reasons.

Defendant’s defence

[4] The defendant does not deny that the parties entered into the Agreement and that the defendant is in arrears with its monthly instalments in excess of R 100 000, 00.

[5] The defendant, however, raised the following defences:

5.1 Non-compliance with the provisions of the National Credit Act, 34 of 2005 (“NCA”); and

5.2 the defendant’s offer to repay the arrear amount.

[6] Insofar as the non-compliance with the provisions of the NCA is concerned, it is common cause that the plaintiff did not comply with the provisions of the Act. The plaintiff avers that the NCA is not applicable to the agreement.

- [7] The defendant denies this averment and pleads that its turnover or asset value did not exceed R 1 000 000, 00 at the time the Agreement was entered into. In the result, the Agreement falls within the ambit of the NCA.
- [8] The plaintiff in dealing with this defence referred to the explicit terms of the Agreement.
- [9] The Agreement is attached to the particulars of claim and consists of a coversheet and a further six pages.
- [10] The heading of the Agreement is titled ***"COST OF CREDIT INSTLAMENT SALE AGREEMENT"*** and clearly states that the Agreement falls ***"Outside the NCA"***. The Pre-Agreement statement's heading also states clearly and in bold letters that the Agreement falls ***"OUTSIDE THE NCA"***.
- [11] In terms of clause 22 of the Pre-Agreement, the defendant acknowledged and agreed that the information contained in the Agreement is true and correct and that based on the information supplied by the defendant, the Agreement is not subject to the NCA.
- [12] The defendant's allegation is not borne out by the terms of the Agreement and without a claim for the rectification of the Agreement, the allegation is in view to the

parol evidence rule, not admissible. The defence is, therefore, not a defence in law.

[See: *Tesven CC v SA Bank of Athens* 2000 (1) SA 268 SCA.]

[13] The defendant's tender to repay the arrears, is subject to agreement between the parties and a court cannot force any party to enter into an agreement.

[14] In the premises, there were no triable issues raised by the defendant which resulted in summary judgment been granted in favour of the plaintiff.

A handwritten signature in dark ink, appearing to read 'N. Janse van Nieuwenhuizen', is written over a horizontal line. To the left of the signature is a large, loopy circular mark.

N. JANSE VAN NIEUWENHUIZEN

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DATE HEARD PER COVID19 DIRECTIVES:

13 July 2021

(Virtual hearing.)

DATE DELIVERED PER COVID19 DIRECTIVES:

14 September 2021

APPEARANCES

Counsel for the Plaintiff/Applicant:

Advocate PSAJ. Jacobsz

Instructed by:

Hack, Stupel & Ross Attorneys

Counsel for the Defendant/Respondent:

Advocate M. Bezuidenhout

Instructed by:

Ilzé Eichstädt Attorneys