

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

Case No 11365/22

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

**16 August 2024**

In the matter between:

**THE STANDARD BANK OF SOUTH AFRICA LTD**

Plaintiff

and

**MELISSA BLOOMBERG**

Defendant

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**JUDGMENT**

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**HASSIM J**

1. The plaintiff has instituted an action against the defendant for amongst others, an order confirming the cancellation of a written instalment sale agreement (“the Agreement”) entered into between the parties on 4 December 2020, and following on that it seeks an order that the defendant return the motor vehicle which is the subject matter of the Agreement. The defendant having delivered a plea, the plaintiff applied for summary judgment.

2. The defendant has raised several points *in limine* to the application for summary judgement in opposition thereto and has also raised three substantive defenses. I am of the view that the issue whether the provisions of section 129 of the National Credit Act, Act No 34 of 2005 (“the NCA”) were complied with prior to the institution of legal proceedings constitutes a triable issue. Accordingly, it is not necessary for me to consider the merits of the points *in limine* nor whether the other two defenses raised by the defendant constitute a *bona fide* defence to the action. This judgment is therefore confined to whether a defence of non-compliance with section 129 of the NCA constitutes a *bona fide* defence in the circumstances of this case.
3. Clause 22.1<sup>1</sup> of the Agreement provides for the consumer designating an address where legal notices in terms of the Agreement may be served. The address “6[...] O[...] W[...], Paulusweg, Polokwane” appears in typescript in Part A of the “Pre-Agreement Quotation/Cost of Credit” [Case Lines A14]. However, at Case Lines A15, a line is put through this typewritten address in manuscript and is replaced in manuscript with the address “3[...] E[...] Street, Murrayfield”. I infer from this that the latter address was an amendment to the address in typescript. In the circumstances it appears that the defendant designated 3[...] E[...] Street, Murrayfield<sup>2</sup> as the address for the serving of legal notices in terms of the Agreement and not 6[...] O[...] W[...], Paulusweg, Polokwane at which address (if it exists) there was in any event no attempt made to serve.
4. Section 129(5)(b) of the NCA requires the notice in terms of section 129 (1) (a) to be delivered to a location designated by the consumer. Clause 22.2 of the Agreement provides “that the documents to be delivered in respect of legal proceedings in connection with this Agreement may only be served at your notice address”. Clause 22.3 permits the consumer to change the notice address by written notice. Neither party avers that the defendant changed the notice address.

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<sup>1</sup>       **“22     Addresses for notices**  
          22.1   You choose, as the address for the serving of legal notices in terms of this Agreement (notice address), your address set out in Part A.”

<sup>2</sup>       CaseLines at A15.

5. The return for the service of the notice in terms of section 129 (1) of the NCA is signed by the deputy sheriff seemingly for Pretoria. According to the return of service the section 129(1) notice was served on 26 November 2021 at 6[...] O[...] Avenue, Val De Grace on “Mr De Beer (Husband)”. It appears from correspondence that Val De Grace is located in Pretoria <sup>3</sup>. The return of service states that this address is the *domicilium citandi et executandi* of “Bloomberg M (De Beer)”. However, this is not the address which the defendant designated for the service of legal notices; she designated 3[...] E[...] Street, Murrayfield. The address 6[...] O[...] Avenue, Val De Grace does not appear in Part A of the Agreement at CaseLines p.A14 nor at CaseLines p.A15.
6. It is irrelevant that the notice in terms of section 129 (1)(a) of the NCA was served on the defendant’s husband who deliberately concealed it from her. The delivery of the notice did not take place at the address which the defendant had designated. It would have been a different matter if the notice had been served on the defendant’s husband at the designated address who on receipt decided to conceal it from his wife. Non-compliance with section 129(1) of the NCA is a defence valid in law. I am satisfied that the defendant has demonstrated a reasonable possibility that the defence advanced may succeed on trial. <sup>4</sup>
7. In the circumstances the defendant is granted leave to defend the action. The costs of the application for summary judgement are to be cost in the cause.

**S K HASSIM**

Judge: Gauteng Division, Pretoria  
(electronic signature appended)

Date of hearing: 22 and 24 July 2024

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<sup>3</sup> CaseLines A47.

<sup>4</sup> Cf. *Erasmus: Superior Court Practice*, 2ed, Service 21, 2023 at D 1-411.

Appearances:

Plaintiff: Adv WA Bawa

Defendant: Mr JT Roos

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties' legal representatives by e-mail and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 16 August 2024.