IN THE SOUTH GAUTENG HIGH COURT

JOHANNESBURG

CASE NO: A3072/10

DATE: 2011-02-28

REPORTABLE

(In the electronic reports only)

10

DELETE WHICHEVER IS NOT APPLICABLE

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

20

---------- ----------

In the matter between

ALTRON ONE FINANCE EXCEPTANCES (PTY) LTD Appellant

(Formerly known as Technologies Acceptances (Pty) Limited)

and

MICHAEL CLIVE HEATHCOTE Respondent

J U D G M E N T

WILLIS, J:

[1] The plaintiff instituted action in the Randburg Magistrate's Court. The plaintiff claimed the sum of R32 177.49 together with interest and cost for the attorney and client's scale. The basis of the claim was that the defendant had stood surety for an agreement concluded between a principal debtor, being a closed corporation, represented by the defendant who was the principal member thereof.

[2] The principal debtor had entered into an agreement in terms of which the principal debtor rented from the appellant certain equipment over a period of 60 months. The rental payable in terms of that agreement was linked to the prime rate of interest. The principal debtor in breach of the agreement failed to make payments to in terms of the agreement. The appellant cancelled the agreement and sought recourse against the surety.

[3] In the particulars of claim it was alleged that the agreement in

question related to the lease to the principal debtor of what would colloquially be known as a photocopying machine. The principal debtor was Xanthus Printing and Stationary CC. The monthly rental would be the sum of around R1 523.18.

[4] In the particulars of claim, the plaintiff alleges that:-

> "The provisions of a National Credit Act 30 of 2005 are not applicable to the agreement in that
>
> 8.1 Ownership of the equipment does not pass to the principal debtor, neither does ownership pass upon satisfaction of a specific condition or upon expiry of the agreement, and the agreement is accordingly not a credit agreement as envisaged in Section 8 (1) and more particularly Section 8 (4) of the said Act; alternatively
>
> 8.2 The principal debtor, a juristic person, had an actual, alternatively stated asset value or annual turnover, which at the time of conclusion of the agreement, was equal to or exceeded the threshold value determined by the Minister in terms of Section 17 (1) of the said Act."

[5] It is quite clear from the provisions of Section 4 of the National Credit Act ("the NCA") that the provisions thereof do not apply in the circumstances alleged by the plaintiff in paragraph 8.2 of the particulars of claim.

[6] The appellant, who was the plaintiff in the court *a quo*, requested a

default judgment. The learned Magistrate declined to grant a default judgment and in doing so, she have relied upon the definition in the Act (the NCA) of an incidental the credit agreement for which one must find the definition in Section 1 of the NCA. This definition has received attention in this division by Moshidi J and Kolbe A J in the case of *Corporate Finance Solutions (Pty) Limited v Frank Collins Logistics (Pty) Limited* (Case number 3029/2010).

[7] In my respectful opinion, it is not necessary to determine whether the agreement in this particular case is an incidental credit agreement or not. In my opinion, it is sufficient to have regard to the undisputed allegation in the particulars of claim, relating to the question of the actual stated asset value or annual turnover at the time of conclusion of the agreement. Where that allegation is undisputed, it seems that there is a valid claim against the defendant and that the proper order for a court is in fact to grant default judgment where it requested.

[8] It is now well settled in this division that if the principal debt does not fall within the scope of the NCA, then any suretyship in respect thereof also falls outside the scope of the NCA. I refer, in particular, to the case of *First Rand Bank Limited v Carl Beck Estates (Pty) Limited and Another* 2009 (3) SA 384 (T) which, I understand, has been followed frequently in this division. Accordingly the appellant must succeed in the appeal against the refusal of default judgment by the learned Magistrate.

[9] The following order is made:

1. The appeal is upheld.
2. The order of the learned Magistrate given on

30 May 2010 is set aside and the following is substituted in lieu thereof:

> "The defendant is to pay the plaintiff the sum of R32 177.49 together with interest thereon at the rate of 15,5 percent per annum from 23 July 2008 (the date of service of summons) to date of final payment and costs of suit on a scale as between attorney and client (as provided for in the applicable agreement)".

Acting Judge Teffo concurred.

10

---oOo---

Counsel for the Appellant: Adv. *A. Grundlingh*

Attorneys for the Appellant: Munnik Basson Inc.

No appearance for the Respondent/Defendant.

Date of hearing: 28 February, 2011

20 Date of judgment: 28 February, 2011