

IN THE SOUTH GAUTENG HIGH COURT

JOHANNESBURG

CASE NO: 31869/2011

DATE: 2012-10-16

10 In the matter between

FEINBERG, M

Applicant

and

WESBANK

Respondent

J U D G M E N T

WILLIS, J:

20 [1] This is an application for rescission of a default judgment. Default judgment was granted against the applicant on 01 November 2011.

[2] The subject matter of the judgment was a lease agreement entered into between the parties in terms of which the applicant leased a 2006 BMW M6-E64 motor vehicle from the respondent.

[3] The vehicle in question is hardly some little jalopy that a poor mother has to drive around to get her children to school in order to ensure that they progress through life. It was a vehicle that cost R1.214 million.

The monthly instalment was R16 862 per month and the applicant is still, despite the default judgment, driving around in the vehicle.

[4] There is a saying, a famous proverb, that those whom God wishes to destroy he first makes mad. If there is to be rescission of a default
10 judgment in this matter, then as far as I am concerned, certainly as a Judge, I should be a candidate to be sent to a lunatic asylum.

[5] Here you have a situation - it is common cause - that she had received service of the summons. Her defence, by the way, is that she was too poor to instruct an attorney, too poor when she leases a BMW for R1.200 million, too poor to go and see an attorney! She also protests that she is subject to debt review and she has not been properly notified that the debt review has been terminated!

20 [6] As I have said in a matter of *Nedbank v Seyfertt*, which was unsuccessfully taken on appeal to the Supreme Court of Appeal, we cannot have a situation in this country and we cannot survive economically if we are to make of it a debtors' paradise. What kind of debtors' paradise would it not be, if an intelligent, well-educated person living in Bryanston can take out a lease of a motor vehicle, not pay for it and expect to be allowed to continue to drive around in luxury? If ever I have seen a case where there is no merit whatsoever in the application for default judgment, it is this one.

[7] The following is the order.

The application for rescission of a default judgment is dismissed with costs.

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