

REPUBLIC OF SOUTH AFRICA



SOUTH GAUTENG HIGH COURT
(JOHANNESBURG)

CASE NO 49874/2010

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

26 April 2012

FHD Van Oosten
FHD VAN OOSTEN

In the matter between

DICK LENNARD

APPLICANT

and

SA TAXI SECURITISATION (PTY) LTD

RESPONDENT

J U D G M E N T

VAN OOSTEN J:

[1] The applicant is the lessee, and in possession of a Toyota Siyaya 12 seater motor vehicle, pursuant to a credit agreement concluded with the respondent, on 5 September 2007. The applicant operates a taxi with the vehicle. He however fell in arrears with payments in terms of the agreement which prompted the respondent to launch an

application for the confirmation of its cancellation of the agreement and the return of the vehicle, on 8 December 2010. The applicant opposed the application but an order for the relief sought was granted in default of his appearance, on 20 October 2011. He now seeks a rescission of that judgment.

[2] The matter has a long protracted history. The applicant has availed himself of every available procedure, including under the National Credit Act 34 of 2005, to retain the vehicle. I do not consider it necessary to refer in any detail thereto. In the present application the applicant has tendered an explanation for his default of appearance. I am satisfied that the explanation is reasonable and that the first requirement for obtaining rescission has accordingly been met.

[3] The issue for determination is whether the applicant has shown a *bona fide* sustainable defence to the claim of the respondent. In this regard, apart from a plea of sympathy for his financial predicament should the judgment not be rescinded, the only ground raised in support of a defence is that his account with the respondent was debited from time to time with legal fees which he submits, was in contravention of the National Credit Act, as well as the Consumer Protection Act. The total amount of those legal fees, it is stated, is R62 770.34. Counsel for the applicant submitted that the crediting of legal fees unlawfully charged to the account, may well result in the applicant having been in credit at the time of the respondent's cancellation of the agreement. The argument is void of any substance. The respondent's statement of account shows that the applicant was constantly in default with payments. Payments that were made were reversed. Debt reviews in terms of the National Credit Act did not produce any positive results. The applicant admits his inability to pay which he ascribes to a variety of circumstances including a downturn in the economy and industrial action by the taxi industry. It has moreover not been alleged that the applicant has met his obligations in terms of the agreement.

[4] Having considered all the circumstances of this case I am not satisfied that it will serve any purpose to allow this matter to proceed to trial. The applicant has not shown a defence to the respondent's entitlement to cancel the agreement. The aspects he has raised concern the *quantum* of the respondent's claim which will be dealt with and finalised once the vehicle has been sold. The applicant's continued possession and use

of the vehicle will merely result in further deterioration of its value to the prejudice of the respondent. It follows that the application cannot succeed.

[5] In the result the application is dismissed with costs.


FHD VAN OOSTEN
JUDGE OF THE HIGH COURT

COUNSEL FOR APPLICANT

ADV E BISSHOFF

APPLICANT'S ATTORNEYS

ARNO STRYDOM ATTORNEYS

COUNSEL FOR RESPONDENT

ADV ARG MUNDELL SC

RESPONDENT'S ATTORNEYS

MARIE-LOU BESTER INC

DATE OF HEARING

25 APRIL 2012

DATE OF JUDGMENT

26 APRIL 2012