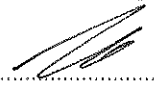


IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG
(REPUBLIC OF SOUTH AFRICA)

CASE NO : 20374/2012

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE YES/NO	NO
(2) OF INTEREST TO OTHER JUDGES YES/NO	NO
(3) REVISED	
DATE 11/6/2013	SIGNATURE 

In the matter between:

**SA TAXI DEVELOPMENT FINANCE (PTY)
LIMITED**

Plaintiff

And

MOKOLOBE, OHENTSI GEORGE

Defendant

JUDGMENT

KOLBE AJ:

[1] The Plaintiff caused summons to be issued against the Defendant claiming inter alia return of a certain motor vehicle ("the vehicle").

[2] A notice of intention to defend was delivered and the Plaintiff now

seeks, by way of summary judgment, return of the vehicle and attorney and client costs to be taxed.

[3] It is alleged in the summons that on or about 8 June 2011, the Plaintiff and Defendant entered into a lease agreement in terms whereof the Plaintiff leased the vehicle to the Defendant against payment by the Defendant to the Plaintiff of agreed monthly rentals.

[4] It is further alleged that the Defendant is in arrears with his obligations, that it had notified the Defendant of its election to claim immediate payment of all rentals and its intention to cancel the agreement which it did.

[5] In his affidavit resisting summary judgment, the Defendant does not deny that he is in breach of the agreement but states that the deponent to the affidavit filed in support of the summary judgment application does not have the required personal knowledge or the authority to depose to the affidavit, that he never received notice in terms of Section 129 of the National Credit Act, Act 34 of 2005 ("the NCA"), that the agreement was not properly cancelled and that the granting of credit to him was reckless.

[6] The defences raised in this matter are identical to the defences raised in a similar matter before me on this roll and judging by the various conflicting decisions in this Division, identical to issues raised in other matters as well.

[7] In the unreported judgment of the **SA Taxi Securitisation (Pty) Limited v Bongani**, case number 00643/2012 signed on 18 April 2012, Coppin J, when dealing with the same deponent and identical averments, held that the deponent to the affidavit filed in support of the summary judgment application, did not have the necessary personal knowledge to depose to the affidavit.

[8] However, in a subsequent, also unreported, judgment of **SA Taxi Securitisation (Pty) Ltd v Maleboho Matlere**, handed down on 20 April 2012 under case number 2125/2012 Satchwell J, also dealing with the same deponent and identical averments, found that there was no reason to dispute the deponent's authorisation or her knowledge as claimed by her specially since she caused certain annexures to be attached to her affidavit and that she clearly had knowledge of the documentation she referred to.

[9] The deponent states that she is the legal manager of the Plaintiff, that in consequence of such position she has in her possession and under her control the files and records of the Plaintiff pertaining to the matter, the contents of which she had familiarised herself with during the course of the Plaintiff's dealings with the Defendant and for purposes of this matter. She further states that by virtue thereof, she has personal knowledge of the facts deposed to.

[10] I am satisfied having considered all the documents placed before this Court that the deponent has sufficient knowledge of the matter to swear positively to the facts thereof.

[11] As far as the complaint that there was non-compliance with Section 129 of the NCA, is concerned it is clear from the documents attached to the summons that a registered letter was sent to House No. V1746, Morekweng Village, the Defendant's chosen *domicilium citandi et executandi* in terms of the lease agreement attached to the summons.

[12] The fact that the Defendant did not receive it does not mean that the Plaintiff has not complied with its obligations.

[13] As far as cancellation or termination of the agreement is concerned, it is clear that in the letter in terms of Section 129 of the NCA, the Defendant is informed that the Plaintiff had elected to claim immediate payment of all future instalments, failing which the agreement would be cancelled.

[14] In the summons, which the Defendant received, the Plaintiff further states in paragraph 13 that "*the Plaintiff herewith terminates the agreement of lease*".

[15] The Defendant further states that the entering into the lease

agreement constituted reckless granting of credit and that the agreement is accordingly unenforceable and that the Court has a discretion to order that it be subject to rearrangement. However, no documentation in support of this contention is attached.

[16] In any event, in the Application for summary judgment, only return of the vehicle and costs are sought. The vehicle is leased to the Defendant at a particular sum of money per month which the Defendant states he cannot afford.

[17] I am of the view that the Defendant has failed to set out a *bona fide* defence to the Plaintiff's claim.

[18] In the result I make the following order:

Summary judgment is granted in favour of the Plaintiff against the Defendant for:

1. Return of the 2011 CMC Sesbuyile 16 seater with engine number 4RB2116587 and chassis number LJSKA3AH8AD801496 to the Plaintiff forthwith;
2. Attorney and client costs to be taxed.

KOLBE AJ _____