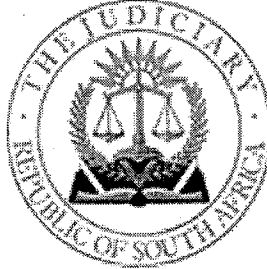
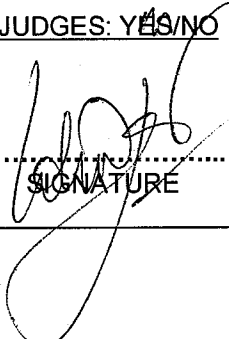


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2019/31586

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: <u>YES</u> / NO
(2)	OF INTEREST TO OTHER JUDGES: <u>YES</u> / NO
(3)	REVISED. <u>✓</u>
<u>8.5.2020</u> DATE	 SIGNATURE

In the matter between:

FIRSTRAND BANK LIMITED t/a WESBANK

Applicant

And

ABANDONED SOLUTIONS SA (PROPRIETARY) LIMITED

Respondent

J U D G M E N T

LAMONT, J:

[1]. The applicant brought an application against the respondent seeking delivery of a motor vehicle in respect of which the respondent claimed it had a

lien and for other relief. The applicant tendered a guarantee as substitute security.

[2] The respondent is in possession of a vehicle owned by the applicant and claims a right to retain it on the basis that it is exercising a lien. The applicant sold the vehicle to its customer in terms of an Instalment Sale Agreement. The customer commenced business rescue proceedings in consequence of which the applicant cancelled the Instalment Sale Agreement. The applicant relied on a term within the agreement reserving ownership to it notwithstanding delivery to its customer. The business rescue practitioner of the customer accepted that the applicant was the owner and consented to the applicant retaking the vehicle and exercising rights of ownership in respect thereof.

[3] The respondent faintly disputed the applicant's rights of ownership based on speculation. It gave no evidence to gainsay what the applicant set out. In my view, the papers establish that the applicant is the owner of the vehicle in question.

[4] The applicant looked for the vehicle, as its customer was not in possession thereof. It found the vehicle in the possession of the respondent. It is unclear how the respondent came into possession of the vehicle. However, the respondent appears to have obtained possession from a repair shop and claims to have rights pursuant to a lien transferred to it by the repair shop. The applicant denies the validity of the respondent's claim. However,

notwithstanding the denial, for the purposes of the proceedings, it accepted the obligation to deliver substitute security to the respondent as against delivery of the vehicle to it.

[5] The owner of property subject to a right of retention by another is entitled to furnish adequate security for payment of the debt and as against the furnishing of that security to release of the security held.

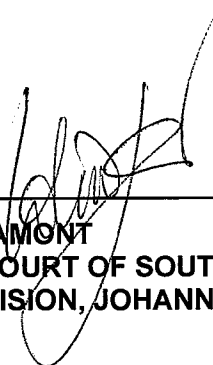
[6] See for example *Spitz v Kesting* 1923 (W) LD 45; *Hochmetals Africa (Proprietary) Limited v Otavi Mining Co. (Proprietary) Limited* 1968 (1) SA 571 (A) at 582 C – F; *Pheiffer v Van Wyk and Others* 2015 (5) SA 464 SCA at 20 and 21; *Myers v Gearbox Centre (Proprietary) Limited* 1977 (4) SA 11 (W) at 15 A.

[7] The guarantee furnished by the applicant, guarantees the full amount of the respondent's claim, including further storage costs as per judgment being granted.

[8] It is my view that the substitute security tendered is adequate and that the applicant is entitled to delivery of the vehicle.

[9] As far as, costs are concerned it does not appear to me that a special order is warranted and ordinary costs on the party and party scale shall be of application.

[10] I accordingly make an order in terms of the draft incorporating the guarantee annexed hereto.



C G LAMONT
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

COUNSEL FOR APPLICANT: Adv. W.G.H. Pretorius

APPLICANT'S ATTORNEYS: Rossouws Lesie Inc

COUNSEL FOR THE RESPONDENT: Att. M. Fehler

RESPONDENT'S ATTORNEYS: M. Fehler Attorneys

DATE OF HEARING: 4 May 2020

DATE OF JUDGMENT: 8 May 2020

B22

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

4 MAY 2020
BEFORE THE HONOURABLE JUDGE LAMONT J

CASE NO: 31586/2019

In the matter between:

FIRSTSTRAND BANK LIMITED t/a WESBANK

Applicant

And

ABANDONED SOLUTIONS (PTY) LTD

Respondent

DRAFT ORDER

HAVING perused the papers filed of record and having considered the matter,

THE FOLLOWING ORDER IS GRANTED:

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG	
Private Bag X7, Johannesburg 2009	
	2020 -05- 08
GLD-JHB-001	
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG	

1. The respondent is ordered to release from its possession and return to the applicant forthwith, the applicant's motor vehicle, being a 2013 Mercedes Benz G350 Bluetec with chassis number WDB4633462X195553 and engine number 64288641234284 ("the vehicle").
2. In the event of the respondent failing to comply with the order in 1 above, then the Sheriff or his Deputy is directed and authorised to enter upon the premises at 137A West Street, Brentwood Park, Benoni or at whichever premises the vehicle may be stored/ found and take



possession of the vehicle from whoever may be in possession thereof.

3. The bank guarantee attached hereto as "A" ^{stands as} ~~and offered by the applicant in substitution of the respondent's alleged lien, is declared to be sufficient and adequate security for the respondent's alleged claim(s) against the applicant.~~ A

4. The respondent is to institute action against the applicant in respect of the respondent's claim(s) within 30 (thirty) days from the date of this order, failing which the aforesaid bank guarantee shall lapse.

5. The respondent is to pay the costs of the application on the attorney and client scale.

BY ORDER 
REGISTRAR

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG		
Private Bag X7, Johannesburg 2000		
	2020 -05- 08	
GLD-JHB-001		
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG		

WesBank

60.
" A "

head office 1 Enterprise Road, Fairland, Johannesburg, 2170
postal address Private Bag X13, 2030

enquiries 0861 288 272 fax 0861 888 272
new business 0861 137 137 settlements 0861 212 212
email service@wesbank.co.za
wesbank.co.za

Dear Sir

I, the undersigned,

SUSANNA WESSELS

do hereby certify as follows:

1. I am a Chief Financial Officer at Wesbank Corporate employed at 1 Enterprise Road, Fairland, Johannesburg and as such I am duly authorised to issue this guarantee on the bank's behalf.
2. We confirm that Abandoned Solutions CC ("Abandoned Solutions") is currently in possession of a motor vehicle ("the Motor Vehicle"), described as a 2013 Mercedes-Benz G350 Bluetec, with engine number 64288641234284, chassis number WDB4633462X195553 and registration number NEITJIE ZN.
3. Abandoned Solutions is claiming a Lien over Wesbank in the amount of R129,950.00 which lien consists of the purchase price of the lien for towing fees, storage at the rate of R550.00 per day, legal fees and administration fees.
4. Wesbank does not admit the validity of the lien, and forthwith denies its validity.
5. In order for Wesbank to obtain possession of its asset, we hereby guarantee payment to Abandoned Solutions the entirety of its lien and any amount of storage still to be incurred subject to the suspensive conditions in paragraph 6 and 7 below.



6. This guarantee is payable to Abandoned Solutions only in the event that Abandoned Solutions obtains a valid judgment against Wesbank in respect of the lien claim in respect of the Motor Vehicle.
7. Abandoned Solutions must institute action against Wesbank for its lien within 90 days of date of this guarantee, failing which it shall *ipso facto* lapse.
8. Should any new or previously undisclosed facts emerge which may prejudice the Bank's security in respect of the Motor Vehicle or any circumstance arise to prevent or unduly delay the sale in execution by Wesbank of the Motor Vehicle, we may withdraw from this guarantee by giving you written notice to that effect, whereupon the guarantee will no longer be held at your disposal.
9. This guarantee is neither negotiable nor transferable.

Yours faithfully



SUSANNA WESSELS
(CHIEF FINANCIAL OFFICER - WESBANK CORPORATE)

