


REPUBLIC OF SOUTH AFRICA



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

CASE NO: 19553/2019

(1)	<u>REPORTABLE: NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES: NO</u>
(3)	<u>REVISED.</u>
<u>03 December 2020</u>	
DATE	 SIGNATURE

In the matter between:

FIRSTRAND BANK LIMITED ta WESBANK

Applicant

And

KTV PROPERTIES (PTY) LTD

First Respondent

KASVAL RAJAGOPAL NAIDOO

Second Respondent

JUDGMENT

MOGALE, AJ:

INTRODUCTION

[1] This is an opposed application for summary judgment in which the Applicant claims cancellation of an Instalment Sale Agreement (the agreement) the return or

possession of a motor vehicle described in the agreement as well as leave to approach this court for payment of the amount due to the Plaintiff.

FACTUAL BACKGROUND

[2] On or about the 7th October 2016 the parties concluded an Instalment Sale Agreement in terms of which the Plaintiff sold to the first Respondent a 2016 Road Hog 13.5 Tri Axil Flat Deck Trailer bearing chassis number AE90342CAGDGK1145 (the vehicle) for a purchase price of R631 488.96 (the purchase price).

[3] In terms of the agreement the purchase price was payable in monthly instalments of R8 839.08. The first instalment payable on the 7th October 2016. All the rights arising out of the instalments sale agreement including ownership of the vehicle which is the subject of this application remained with the Applicant until the purchase price shall have been paid in full.

[4] On or about the 7th October 2016 the second Respondent executed a deed of suretyship in favour of the Applicant and bound himself as surety and co-principal debtor with the first Respondent for and in respect of the first Respondent's liability.

[5] It is common cause that the first Respondent defaulted with payments of the monthly instalments as a result the Applicant issued summons claiming cancellation of the instalment sale agreement and return of the vehicle sold.

[6] The Respondents entered appearance to defend and after filing their plea the Applicant duly filed this application for summary judgment in terms of Rule 32 of the Uniform Rules of court as amended.

[7] The procedure provided in Rule 32 was designed to enable the Applicant who has a clear case to obtain swift enforcement of a claim against the respondent who has no real defence to the claim.

[8] For any respondent to successfully oppose an application for summary judgment it is required of such a Respondent in terms of Rule 32 (3)(b) to satisfy the court by affidavit that he has a *bona fide* defence to the claim. In such affidavit the Respondent must disclose fully the nature and grounds of defence and the material facts relied upon.

[9] The Supreme Court of Appeal in the matter of ***Joob Joob Investment (Pty) Ltd v Storks Mavundla Zele Joint Venture (2009) (5) SA (SCA)*** held that:

“Summary Judgment procedure is not meant to deprive a defendant with triable issues or a sustainable defence.... Its purpose and its proper application can only hold terrors and are drastic for a defendant who has no defence.

[10] The Second Respondent deposed to an affidavit in opposition to the application for summary judgment. The affidavit does not disclose any defence all that the second Respondent says is that because of business having slowed as a result of amongst others the COVID-19 lock down period the first Respondent has been unable to generate sufficient income to pay the instalments.

[11] All that the defendants plead is that they be afforded time to settle the arrears. It is common cause that at the time that the Applicant issued summons the Respondents were in arrears in the amount of R135 391.70. The Applicant postponed the first application for summary judgment which had been set down for 22nd October 2019. The respondent still did not rectify their default and still remain in arrears.

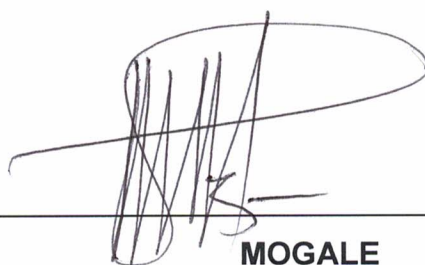
[12] In their heads of argument filed in October 2020 the Respondent plead that the application be postponed *sine die* and that they be allowed to pay R15 000.00 per month with effect the 20th November 2020.

[13] It is evident that in the present matter the Respondents have not raised any sustainable defence in the result I must make the following order:

ORDER

1. The Agreement between the applicant and the respondents is hereby cancelled.
2. The respondents are ordered to return to the applicant the vehicle described as a 2016 Road Hog 13.5 Tri Axil Flatdeck Trailer motor vehicle with chassis number AE90342CAGDGK1145;
3. Failing the above, that the Sheriff of the above Honourable Court or his lawful deputy be authorised, directed and empowered to attach, seize that vehicle wherever he may find same and to hand the vehicle to the applicant;
4. The applicant is granted leave to approach this court for an order enforcing the remaining obligations of the respondents in terms of the said agreement, which is the payment of the sum due to the applicant after deductions of the proceeds of the sale of the vehicle in terms of section 131 of the National Credit Act 34 of 2005;
5. The respondent is ordered to pay the Plaintiffs wasted costs.

Dated at Johannesburg on this 03 day of December 2020

A handwritten signature in dark ink, consisting of a large, stylized 'M' and 'G' with a horizontal line crossing through them, positioned above a solid horizontal line.

MOGALE
ACTIG JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances

DATE OF HEARING	:	28 October 2020
DATE OF JUDGMENT	:	03 December 2020
FOR APPLICANT	:	Adv Jason Govender
INSTRUCTED BY	:	Smith Van der Watt Inc.
FOR RESPONDENT	:	Adv Mike Kohn
INSTRUCTED BY	:	Michael Popper & Associates Inc.