

REPUBLIC OF SOUTH AFRICA



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

CASE NUMBER: 2020/17846

DELETE WHICHEVER IS NOT APPLICABLE

1.REPORTABLE: NO

2.OF INTEREST TO OTHER JUDGES: NO

3.REVISED NO

02 March 20222


Judge Dippenaar

In the matter between:

DT JANSE VAN RENSBURG

Applicant

And

NEDBANK LTD (MFC DIVISION)
(Registration number: 1951/000009/06)

Respondent

LEAVE TO APPEAL JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is deemed to be 10h00 on the 02nd of March 2021.

DIPPENAAR J:

[1] The applicant, the defendant in summary judgment proceedings, applies for leave to appeal against the whole of the judgment and order granted by me on 19 October 2021. The defendant is a qualified and practicing attorney. He represented himself in his personal capacity in these proceedings. For ease of reference the parties will be referred to as in the summary judgment proceedings

[2] My judgment is comprehensive and I stand by the reasons set out therein. The amounts challenged by the defendant did not raise a triable issue nor were they sufficient to challenge the fact that he was in arrears and in breach of the instalment sale agreement at the time the plaintiff cancelled the instalment sale agreement. I granted summary judgment against the defendant and granted orders confirming the cancellation of the instalment sale agreement concluded between the parties and directing the defendant to return the motor vehicle forming the subject matter of that agreement to the plaintiff. The damages portion of plaintiff's claim was postponed sine die.

[3] In the summary judgment proceedings, the defendant had delivered a plea and two affidavits resisting summary judgment in which various grounds of defence were raised. The plaintiff did not object to the supplementary affidavit delivered by the defendant and both affidavits were taken into consideration.

[4] In his application for leave to appeal, the defendant raised an objection to a postponement not being granted and some seven grounds on the merits of the application. Both parties delivered written heads of argument in the present application.

[5] The application for summary judgment was enrolled on the opposed motion roll in accordance with the applicable Practice Directive¹ and enrolled for the whole of the week commencing on 11 October 2021. The notice of set down was served on the defendant on 16 September 2021. Although initially allocated for hearing on 14 October 2021, that allocation was changed to accommodate the defendant who indicated his unavailability on that date, to a hearing on 13 October 2021. The defendant only appeared some time after the matter was called at 10h00, when it had been enrolled for hearing. By that time, default judgment had been granted. That order was recalled and the matter was again called for hearing. During argument, the defendant orally from the bar sought a postponement. The matter was stood down until 15 October 2021 for a substantive application to be launched. The defendant elected to abandon the postponement application and elected to argue the application on its merits. Pursuant to that argument, judgment was reserved and summary judgment was later granted. The defendant did not illustrate that he was prejudiced as a result of the procedure followed. It cannot in my view be concluded that those circumstances illustrate a reasonable prospect of success on appeal.

[6] During argument, the defendant sought to raise numerous further grounds on which leave to appeal was sought, not raised in his plea or affidavits resisting summary judgment, nor in the original application proceedings or in his present heads of argument. They further traversed an ambit outside the grounds of appeal raised in the notice of application for leave to appeal. These issues further raise issues of fact not previously addressed, which defendant sought to advance from the bar and which had not been canvassed in the papers in the summary judgment application. These issues pertained to alleged non-compliance with the National Credit Act in various respects and challenges to the validity of the instalment sale agreement, which defendant had admitted in his plea.

[7] This approach cannot be countenanced. The defendant did not launch any application for leave to advance further evidence on appeal nor an application to withdraw

¹ Gauteng Local Division Practice Manual of 16 October 2018, paras 9.8.3.1 and 9.8.3.4

the admissions pertaining to the instalment sale agreement in his plea. It is trite that a party is bound to the grounds raised in his notice of appeal². The additional grounds raised by the defendant in argument can thus not be considered for purposes of the present application.

[8] Central to this application is the applicant's contention that there is a reasonable prospect that another court would come to a different finding and would dismiss the application for summary judgment.

[9] It must be considered whether there is a sound and rational basis for the conclusion that there are prospects of success on appeal³, considering the higher threshold test⁴ envisaged by s17 of the Superior Courts Act⁵ ("the Act") and whether a reasonable prospect exists that another court would come to a different finding.

[10] I have considered the papers filed of record and the grounds set out in the applicant's application for leave to appeal as well as the parties' extensive arguments for and against the granting of leave to appeal. I have further considered the submissions made in their respective heads of argument and the authorities referred to by the respective parties.

[11] In applying the relevant principles to the facts and each of the grounds advanced in the notice of leave to appeal, I conclude that the appeal would not have a reasonable prospect of success as contemplated in s17(1)(a) of the Act. As the defendant did not

² Songono v Minister of Law and Order 1996 (4) SA 384 (E) at 385I-386A; AJ Shephard (Edms) Bpk v Santam Versekeringsmaatskappy Bpk 1985 (1) SA 399 (A) at 413D-415G; Bredenkamp v Du Toit 1924 GWL 15

³ Four Wheel Drive Accessory Distributors CC v Rattan NO 2019 (3) SA 451 (SCA) at para 34

⁴ Acting National Director Public Prosecutions and Others v Democratic Alliance [2016] ZAGPPH 489 (24 June 2016) at para 25

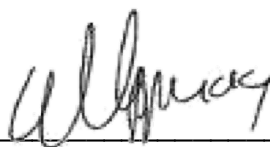
⁵ 10 of 2013

illustrate a triable issue, summary judgment is not to be considered a drastic remedy⁶. It follows that the application must fail.

[12] There is no basis to deviate from the normal principle that costs follow the result. In terms of the instalment sale agreement, the plaintiff is entitled to costs on the scale as between attorney and client.

[13] I grant the following order:

The application for leave to appeal is dismissed with costs on the scale as between attorney and client.



EF DIPPENAAR
JUDGE OF THE HIGH COURT
JOHANNESBURG

APPEARANCES

DATE OF HEARING	: 28 February 2022
DATE OF JUDGMENT	: 02 March 2022
APPLICANT	: In Person
RESPONDENT'S COUNSEL	: Adv. M. Reineke
RESPONDENT'S ATTORNEYS	: DRSM attorneys

⁶ Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture 2009 (5) SA 1 (SCA)