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

CASE NUMBER: 2021/51795

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED.

01 DECEMBER 2022

In the matter between:

BELL EQUIPMENT SALES S.A. LIMITED

Plaintiff

and

DONGASTRO EMPERIO (PTY) LIMITED

First Defendant

NOMATHANSANQA ZAMATHEMBU MATHEMBU

Second Defendant

This judgment was handed down electronically by circulation to the parties' and/or the parties' representatives by email and by being uploaded onto CaseLines. The date and time for hand-down is deemed to be 10h00 on 01 December 2022.

JUDGMENT

REDMAN AJ:

[1] This is an application for summary judgment brought against the first and second defendants, jointly and severally, arising out of a number of agreements concluded between the parties.

[2] One of the agreements upon which the plaintiff relies is an Instalment Sale Agreement concluded between the plaintiff and the first defendant on 21 January 2021 in terms of which the plaintiff sold to the first defendant a new Kobalco SK 520 HDLC-10 with VIN number [....]. The Instalment Sale Agreement incorporated a suretyship signed by the second defendant.

[3] In its particulars of claim the plaintiff claims payment of the amount of R3 470 550,00 being the outstanding balance allegedly due and owing in terms of Instalment Sale Agreement.

[4] In addition to the aforesaid claim, the plaintiff in its particulars of claim, claims further amounts of R44 313.87 arising out of a Credit Agreement and R34 792,79 arising out of a Service Agreement.

[5] In their plea, and in the affidavit resisting summary judgment, the defendants opposed the claims under the Credit Agreement and Service Agreement and disputed the amount payable under the Instalment Sale Agreement.

[6] In respect of the Instalment Sale Agreement, the defendants contended that contrary to what the plaintiff claimed in the summons, the defendants were only indebted to the plaintiff in the amount of R1 717 000,00 (One million seven hundred and seventeen thousand Rand). The defendants alleged that certain payments had not been taken into account by the plaintiff and accordingly the amount claimed by the plaintiff was inflated.

[7] In the application for summary judgment, the plaintiff seeks judgment against the defendant for the admitted liability of R1 717 000,00 in accordance with the provisions of Rule 32(6)(b)(ii).

[8] Where a defendant is entitled to defend part of a claim, the provisions of Rule 32(6) require that leave to defend be granted in respect of that part of the claim. See *Firststrand Bank Ltd v Carl Beck Estates (Pty) Ltd 2009 (3) SA 384 (T)* at [29].

[9] In this matter I am satisfied that the plaintiff is entitled to summary judgment in the amount admitted by the defendants.

[10] In the circumstances, I make an order in the following terms:

1. Summary judgment is granted against the first and second defendants who shall be liable, jointly and severally, for:

1.1. payment of the amount of R1 717 000,00;

1.2. interest on the amount of R1 717 000,00 at the rate of 7% per annum, calculated from 28 July 2021 until date of final payment;

1.3. confirmation of the cancellation of the Instalment Sale Agreement;

1.4. in the event that payment of the aforesaid amount of R1 717 000,00 is not made within 5 (five) days of date of this Order, the Sheriff or his/her lawful deputy is authorised, directed and empowered to attach, seize and hand over to the plaintiff the Kobalco machine having VIN number [....].

2. The first and second defendants are granted leave to defend the balance of the issues in the action that are not finally determined by this order.

3. The defendants are jointly and severally ordered to pay the costs of the application for summary judgment on the scale as between attorney and client.

N. REDMAN

Acting Judge of the High Court
Gauteng Division, Johannesburg

Heard: 29 November 2022

Judgment: 01 December 2022

Appearances:

For Plaintiff: C.J. Bekker

Instructed by: Fluxmans Inc.

For Defendants: S. Kunene

Instructed by: Mabuza Sitha Attorneys Inc.