

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

1/9/14

CASE NUMBER: 32415/2014

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHERS JUDGES: YES/NO

(3) REVISED

1/9/2014

DATE

SIGNATURE

In the matter between:

ABSA BANK LIMITED

APPLICANT

and

SELLO PETER RABELE

RESPONDENT

JUDGMENT

MODIBA AJ:

1.

This is an application for summary judgement. The applicant's cause of action is based on failure by the respondent to honour his payment obligations to the applicant pursuant to a written instalment sale agreement entered into between the parties on 13 October 2011. In

terms of the said agreement, the respondent was liable to make monthly payments of R6, 613.01 for a period of 24 months commencing 25 November 2011.

1.

On 5 May 2014, the applicant issued summon against the respondent alleging that the respondent defaulted on his payments. The applicant claimed cancellation of the agreement, the return of a 2005 BMW 525i A/T (E60) motor vehicle and other ancillary relief. On 10 May 2014, the summons was served on the respondent personally. On 26 May 2014 the respondent filed an appearance to defend. On 9 June 2014 the applicant served an application for summary judgment on the respondent. The application complies with sections 129 and 130 of the National Credit Act. On 17 July 2014, the respondent filed an affidavit resisting an application for summary judgement.

2.

THE APPLICABLE LEGAL PRINCIPLES

The applicant's claim is for a liquidated amount of money as anticipated in rule 32(1)(b) of the Uniform Rules of Court in that it is based on an obligation to pay an agreed sum of money.¹ Unless, the defendant satisfies, the court by affidavit that he has a bona fide defence to the applicant's action, fully disclosing the nature of his defence and the facts upon which he seeks to rely, the court may enter summary judgment in favour of the applicant, unless there is doubt that the applicant's case is answerable.² The respondent's bona fide defence so disclosed must be good in law.³

3.

¹ Lester Investments (Pty) Ltd v Narshi 1951 (2) SA 622 SA 464 (C).

² Tesven CC v South African Bank of Athens 2000 (1) SA 268 (A).

³³ Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A) at 426.

In his application resisting summary judgment, the respondent raised two defences, namely (a) *lis pendens* - he alleged that the applicant has issued 3 summons against him relating to the causes of action based on the same facts and (b) counterclaims – he alleges that he has valid counterclaims against the applicant in respect of these actions.

4.

The respondent appeared in person. He submitted that the three actions are interrelated and based on similar facts and for that reason, he would like an opportunity to have the matters consolidated so that they are heard as one application. However in his answering affidavit he failed to set out the causes of actions for the other two matters, the nature of his defence and or counterclaim in respect of this and the other two matters. He also failed to disclose the facts upon which he seeks to rely. To succeed in resisting summary judgment, the respondent is required to set out his defence with sufficient degree of clarity to enable the court to ascertain whether he has a defence which if proved at trial will constitute a defence to the applicant's action.⁴

5.

In my view, the respondent has failed to comply with the requirements of rule 32 of the Uniform Rules of Court in resisting the application for summary judgment. The applicant's application complies with Rule 32 of the Uniform Rules of Court. In my view, the applicant is entitled to the relief sought in the application for summary judgment.

6.

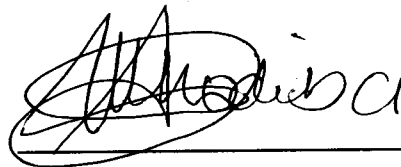
ORDER

In the premises, I make the following order:

1. The cancellation of the agreement is confirmed;

⁴ See *Maharaj v Barclays National Bank* at xxx

2. The Respondent is ordered to return the following motor vehicle to the Applicant:
2005 BMW 525I A/T (E60)
Engine number: 04766000
Chassis number: WBANE5200SCK66946
3. The Applicant's claim for damages arising out of the Respondent's breach of the Agreement between the parties is postponed sine die.
4. The Respondent is ordered to pay the Applicant's costs relating to this application on a party and party scale.



MODIBA AJ

Counsel for the Applicant

Ms E De Lange

Instructed by:

Hack Stupel & Ross

For the Respondent

Mr SP Rabele (in person)

Date of hearing: 22 July 2014

Date of judgment: 1 September 2014