



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case No: 67598/2016

In the matter between:

14/12/2016

ABSA BANK LIMITED

Plaintiff

and

JOSEPH HEMBLY

Defendant

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES/NO ☒ NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO ☒ NO
(3) REVISED.

14/12/2016
DATE


SIGNATURE

JUDGMENT

HF JACOBS, AJ:

[1] This is an application for summary judgment brought by ABSA Bank claiming cancellation of an instalment agreement in terms of which the defendant purchased from the plaintiff a C180 coupe Mercedes Benz 2012 model motor vehicle an order authorising the Sheriff of the High Court to attach, cease and hand over to the plaintiff the said vehicle and costs of suit.

The defendant delivered a notice of intention to defend on 3 October 2016 whereupon the plaintiff applied for summary judgment. The application for summary judgment was set down for hearing on 18 November 2016. On that date the defendant appeared in person and sought a postponement. I granted the postponement to 8 December 2016 directing the defendant to file an answering affidavit before the close of business on 2 December 2016 in support of his opposition of the application for summary judgment. I also reserved the issue of costs of 18 November 2016 to be determined on 8 December 2016.

[2] The defendant duly delivered an opposing affidavit on 2 December 2016. The affidavit, excluding annexures, comprises 37 pages.

[3] In his affidavit the defendant seeks condonation for the late filing of his opposing affidavit. I am of the view that it is in the interest of justice that condonation should be granted. The defendant argued the matter in person and submitted that the application for summary judgment should fail by reason of its extraordinary and drastic nature. The defendant further challenged the authority of the deponent to the plaintiff's founding affidavit to represent the plaintiff in the proceedings. The challenge is in my view nothing more than a bald denial of the deponent's (Mr Geyer's) authority to represent the plaintiff.

[4] The defendant further argued that insufficient information is stated in the summons and what is attached thereto to justify the application for

summary judgment. The defendant further refers to provisions of the Banks Act, the Bills of Exchange Act and a document attached to his answering affidavit under the rubric "*International Review of Financial Analysis*", a document dealing with the new securitisation regulations published by the Registrar of Banks and a shareholders report of the plaintiff as registered company in terms of the Companies Act.

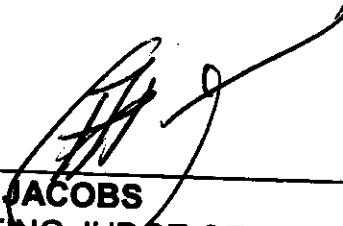
[5] None of the documents or any of the facts deposed to by the defendant address any defence in law to the plaintiff's claim.

[6] In my opinion no *bona fide* defence is set out by the defendant in his affidavit and that summary judgment must be granted as claimed. I therefore make the following order:

ORDER

1. Cancellation of the written contract between the plaintiff and the defendant dated 5 October 2012 is confirmed;
2. The Sheriff of the High Court is ordered and authorised to attach, cease and hand over to the plaintiff the vehicle being a 2012 Mercedes Benz C180 coupe A/T, engine number 27491030010865, chassis number WDD2043312F971868; and

3. The defendant is ordered to pay the costs of the application for summary judgment and the costs of the postponement of 18 November 2016.



H F JACOBS
ACTING JUDGE OF THE HIGH COURT
PRETORIA

Date: 14 December 2016