



**HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

**CASE NO: 29569/2020**

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE 12 FEBRUARY 2021

SIGNATURE

In the matter between:

**BMW FINANCIAL SERVICES (SA) PTY LTD**

Applicant

and

**CHRISTINAH MARY MTHETHWA**

Defendant

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**J U D G M E N T**

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*This matter has been heard in terms of the Directives of the Judge President of this Division dated 25 March 2020, 24 April 2020 and 11 May 2020. The judgment and order are accordingly published and distributed electronically.*

**DAVIS, J**

[1] This is the judgment in a summary judgment application heard virtually on this court's unopposed motion court roll of 10 February 2020. Despite invitations to the virtual hearing and numerous unsuccessful calls to the defendant's attorney's offices, there was a default of appearance by or on behalf of the defendant.

[2] The cause of action

2.1 There is no dispute of fact that the plaintiff and the defendant had entered into a written agreement with each other (annexed to the plaintiff's particulars of claim) on 28 November 2014 whereby the plaintiff has sold a certain 2014 BMW 420D Gran Coupe M Sport A/T (F36) to the defendant.

2.2 Ownership of the vehicle remained vested in the plaintiff until the vehicle was fully paid off.

2.3 The monthly installment was R 9 057,90 with a final installment of R 185 608.06 payable on 25 November 2020.

2.4 The plaintiff alleged breach of the agreement by failure to pay and claimed confirmation of the subsequent termination thereof, return of the vehicle and the customary ancillary relief.

2.5 After delivery of the defendant's plea, the plaintiff applied for summary judgment and it is that application which is now to be considered.

[3] "Defences"

Upon a reading of the defendant's pleas and the affidavit filed in opposition to the summary judgment application, the following appears to be the situation:

- 4.1 The defendant claims that the plaintiff had not been correct in alleging that the defendant had not made the required payments in April 2020, entitling the plaintiff to terminate the agreement. At that stage however, the defendant was already in arrears in the amount of R75 828,28 and the short payment which the defendant had paid in April 2020 had not erased the arrears.
- 4.2 The defendant further relies on a declaration of over-indebtedness made in the Magistrates Court for the District of Polokwane held at Polokwane in case No 5565/2019 together with an order rearranging her payment obligations in terms of section 86 and 87 of the National Credit Act, 2005.
- 4.3 However, as appears from the abovementioned court order, the plaintiff's agreement (including another one for a separation vehicle) has expressly been excluded therefrom. The plaintiff was therefore entitled to proceed against the defendant and there is no "statutory remedy" disclosed as a defence, as claimed by the defendant.
- 4.4 Furthermore, the defendant concedes in her affidavit that she continues to pay "almost" 90% or 92% of the monthly instalments. This she does through a business called Debtsafe. These short payments are made unilaterally by the defendant and not by agreement with the plaintiff and actually confirms the plaintiff's allegations of breach of the payment terms of the written agreement.



- 4.5 The defendant, in her opposing affidavit dated 2 October 2020<sup>2</sup> alleged that, if the matter is referred to trial “or even postponed for a week”, the full outstanding balance due, including the “balloon” payment, would be settled. In a separate paragraph she claimed that “*by November 2020 I would settle this car*”. Nothing of the sort has happened.
- 4.6 In the meantime, the agreement had in any event come to an end through the effluxion of time. The due date for the final payment had also come and gone.
- 4.7 Misconstruing the resolution whereby the plaintiff’s deponent to the affidavit supporting summary judgment had been authorized, the defendant claimed that the application should have been postponed to 12 October 2020 for this to be remedied. The defendant is incorrect in her interpretation and the deponent had been properly authorized as appears from paragraph 3 of the resolution (the defendant erroneously only relied on paragraph 1 of the said resolution). The deponent has been duly authorized.
- 4.8 Apart from the above aspects, no triable defence has otherwise been disclosed by the defendant and the plaintiff is entitled to the relief claimed.

[4] Order:


Summary judgment is granted in favour of the plaintiff against the defendant for:

5.1 Confirmation of termination of the agreement.

5.2 Return of a 2015 BMW 420D Gran Coupe M Sport A/T (F36) with engine no 87819014 and chassis number WBA4B52070D573294 to the plaintiff forthwith.

5.3 The plaintiff is authorized to apply to the court on the same papers, supplemented insofar as maybe necessary, for judgment in respect of any damages and further expenses incurred by plaintiff in the repossession of the said vehicle, which amount can only be determined once the vehicle has been repossessed by the plaintiff and has been sold.

5.4 Cost of suit.



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N DAVIS  
Judge of the High Court  
Gauteng Division, Pretoria

Date of Hearing: 10 February 2021

Judgment delivered: 12 February 2021

**APPEARANCES:**

For the Applicants:	Adv. N Latif
Attorney for Applicants:	Strauss Daly Attorneys, Pretoria
For the Defendant:	No appearance.
Attorney for Defendant:	Mabini Incorporated, Pretoria