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

Case Number: **63958/2019**

**REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED: YES
DATE: 14 September 2022**

In the matter between:

**FIRSTRAND BANK LIMITED
trading as WESBANK**

Applicant/Plaintiff

and

MADINGA ARCHITECTURAL

SERVICES (PTY) LTD

First Respondent/Defendant

KNOWLEDGE MADINGA

Second Respondent/Defendant

JUDGMENT

JANSE VAN NIEUWENHUIZEN J:

1. The applicant applies for summary judgment against the defendants for:
 - 1.1 confirmation of the cancellation of the Instalment Sale Agreement between the applicant and the first respondent;
 - 1.2 repossession of a 2017 Ford Ranger (“the goods”) that formed the subject matter of the Instalment Sale Agreement;
 - 1.3 damages, being the difference between the value of the goods upon repossession and the balance outstanding under the Instalment Sale Agreement;
 - 1.4 Costs and interest on the amount outstanding in terms of the Instalment Sale Agreement.
2. The second respondent is cited in his capacity as surety and co-principal debtor with the first applicant in terms of a written Deed of Suretyship.
3. The applicant avers that the first respondent is in breach of its obligation under the Instalment Sale Agreement (“the Agreement”), in that the first respondent has failed to pay the monthly instalments timeously or at all. Prior to issuing the summons, the applicant complied with the provisions of section 129 (1)(a) of the National Credit Act, 34 of 2005 (“the NCA”) and proof of compliance is attached to the particulars of claim.
4. Lastly the applicant states that it cancels the agreement as it is entitled to do.

Plea

5. The plea filed by the first and second respondents is somewhat convoluted and appears to have been prepared by a layperson. Notwithstanding a court order

directing the respondents to file an answering affidavit in the summary judgment application, the respondents failed to do so. In the premises, the summary judgment application was adjudicated with reference to the defences pleaded in the respondents' plea. I pause to mention, that the attorneys representing the respondents withdrew from record prior to the hearing of the application. In the result, the second respondent represented the respondents at the hearing of the application.

6. The main defence raised in the respondents' plea is the applicability of the NCA to the agreement. According to the plea, the respondents received the section 129 notices and proceeded to apply for debt review. The applicant, according to the plea, refused to participate in the debt review and informed the debt councillor that the agreement falls outside the ambit of the NCA.

7. The respondents insist that the NCA is applicable and aver that the extension of credit to the first respondent was reckless as contemplated in the NCA. The respondents pray that the matter be referred to the National Credit Regulator to investigate the reckless credit allegations.

8. Although the applicant did send the section 129 notices, Ms Gaffoor, counsel for the applicant, submitted that the notices were sent *ex abundante cautela*. If one has regard to the Cost of Credit Schedule Instalment Sale Agreement it is clearly stated at the top of the page that the agreement falls outside the NCA. The second respondent signed the agreement on behalf of the first respondent and the respondents are bound by the terms of the agreement.

9. Notwithstanding the aforesaid, Ms Gaffoor submitted that it is in any event evident from the provisions of the NCA, that the agreement does not fall within the ambit of the Act.

10. Section 4 of the NCA provides for the application of the Act and the subsection applicable in *casu* reads as follows:

“4(1) Subject to sections 5 and 6, this Act applies to every credit agreement

between parties dealing at arm's length and made within, or having effect within, the Republic, except-

(b) a large agreement, as described in section 9(4), in terms of which the consumer is a juristic person whose asset value or annual turnover is, at the time the agreement is made below the threshold value determined by the Minister in terms of section 7(1);”

11. The applicable threshold value in terms of section 7(1)(a) is presently R 1 million.

12. A *large agreement* is described in section 9(4)(b) as:

“any other credit transaction except a pawn transaction or a credit guarantee, and the principle debt under that transaction or guarantee falls at or above the higher of the thresholds established in terms of section 7(1)(b).”

13. The applicable threshold is presently R 250 000, 00.

14. The principle debt in terms of the agreement is R 704 563, 20, which amount is significantly higher than the threshold of R 250 000, 00.

15. In the result, the agreement is a *large agreement* as defined in section 4(1)(b) read with section 9(4)(b) and is exempted from the provisions of the NCA.

16. The respondents did not rely on any other legal defences. In the premises, the respondents have failed to disclose a *bona fide* defence to the applicant's claim and the applicant is entitled to summary judgment.

ORDER

Judgment is granted against the first respondent, in the following terms:

1. The cancellation of the Instalment Sale Agreement is confirmed.

2. The applicant is authorised to repossess the following vehicle:

2017 Ford Ranger 2.2 TDCI XL P/U D/C

ENGINE NUMBER: [....]

CHASSIS NUMBER: [....]

Judgment is granted against the first and second respondents, jointly and severally, the one paying the other to be absolved for:

3. Payment of damages, which payment is postponed *sine die*.
4. Costs of suit on an attorney and client scale.

N. JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

DATE HEARD: 1 September 2022
DATE DELIVERED: 14 September 2022

APPEARANCES

Counsel for the applicant: Adv N Gaffoor

Instructed by: Kannigan Attorneys

for the 1st and 2nd respondents: Second respondent appeared in person and in a representative capacity for the First respondent.