

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

Case No: 8325/2019

In the matter between:

ABSA BANK LIMITED

PLAINTIFF

and

IDREES MANSOOR

DEFENDANT

IDENTITY NO: [...]

ORDER

- (a) The application for summary judgment is refused;
- (b) The defendant is given leave to defend the action;
- (c) Costs are reserved for determination by the trial court.

JUDGMENT

MOSSOP AJ:

- [1] This is an opposed application for summary judgement.

[2] The application has its genesis in a transaction between the plaintiff and the defendant in terms of which the defendant purchased a BMW motor vehicle (henceforth 'the motor vehicle') from the plaintiff on an instalment sale basis. The agreement was concluded in April 2018, but in October 2018 the defendant decided to sell the motor vehicle. He consequently placed an advert for the motor vehicle on an online website known as 'Gumtree' and the advertisement duly attracted the attention of a Mr Mohammed Essa (henceforth 'Mr Essa'). Mr Essa agreed to purchase the motor vehicle for a purchase consideration of R679 000.

[3] On 14 November 2018 Mr Essa sent the defendant a message on the online social media application 'WhatsApp' requesting him to check with the plaintiff whether the purchase price that he had paid had been received by it and credited to the vehicle transaction account (henceforth the AVAF account'). The defendant did so and contacted the plaintiff's call centre. He was advised that two separate payments had indeed been made in the amounts of R495,000 and R186 000 respectively into the AVAF account. Such payments, he was advised, were in the form of electronic funds transfers (henceforth 'EFT'). This was the mode of payment that the defendant had agreed upon with Mr Essa.

[4] Thereafter, the defendant made a payment of approximately R97,000 into the AVAF account, being the shortfall on the motor vehicle due to the plaintiff following the payment by Mr Essa. A short while thereafter, the defendant again contacted the plaintiff's call centre and was advised that the plaintiff had closed the AVAF account and that a letter to that effect had been emailed to him in which it was also confirmed that the AVAF account had been settled in full. The defendant asked the defendant's representative whether he could release the vehicle to Mr Essa and was advised that it was safe to do so as the AVAF account had been closed by the plaintiff. On 17 November 2018 he accordingly released the vehicle to Mr Essa.

[5] Two days later, a representative of the plaintiff contacted the defendant and informed him that the original NATIS documents were ready for collection by him from

the plaintiff's Windermere branch. He also received a letter, dated 16 November 2018, confirming that the AVAF account had been paid in full. This letter came after the telephone calls to the plaintiff's call centre and after he was told that it was safe to release the motor vehicle to Mr Essa. The letter contained a warning that the payments could be returned and the confirmation contained therein was given without prejudice. The next day, the defendant collected the NATIS documents from the plaintiff's Windermere branch and gave them to Mr Essa. The plaintiff also provided him with a statement of account, dated 15 November 2018, which reflected the receipt of both his and Mr Essa's payments.

[6] The inevitable happened: the payments made by Mr Essa were reversed. It transpired that the payments made by Mr Essa had been made by way of two cheques and not two EFT transactions, contrary to the agreement the defendant had with him, and contrary to the advice he had received from the call centre operative.

[7] The plaintiff thereafter issued summons against the defendant, essentially, for the reversed payments of Mr Essa. The defendant having entered an appearance to defend the action and having pleaded, the plaintiff now seeks summary judgment against him.

[8] The defence raised by the defendant is essentially one of an estoppel. He asserts that the plaintiff, through its various representatives, made four misrepresentations to him, namely:

- (a) that the AVAF account had been paid in full and had been closed by the plaintiff;
- (b) that it was safe for him to release the vehicle to Mr Essa;
- (c) it provided him with the original NATIS documents for the motor vehicle; and
- (d) it provided him with a statement indicating that it had received the amount of R777,700 in respect of the motor vehicle.

[9] To this I think could profitably be added a misrepresentation that the payments made by Mr Essa had been made by two EFT transactions when they had actually been made by two cheque transactions.

[10] The plaintiff contends that a defence of estoppel is not available to the defendant and relies heavily on the matter of *Absa v Wolmarans*.¹ This is a full bench appeal judgment of the Cape High Court. The facts of that matter bear a passing resemblance to the facts of the present matter. That matter also involved the sale of a vehicle in respect of which payments by the purchaser were subsequently dishonoured. In *Wolmarans*, the lower court upheld the defence of estoppel but on appeal the order of the lower court was reversed and judgment was entered against the defendant.

[11] There are, however, in my view, several factors that distinguish that matter from this one:

- (a) *Wolmarans* was an appeal after a trial at which all the relevant facts were ventilated through evidence;
- (b) In *Wolmarans*, the bank provided nothing in writing to the defendant – everything was done and discussed orally; and
- (c) In the present matter, the plaintiff's representative advised the defendant that payment had been made by EFT, as agreed between him and Mr Essa. Factually, this was incorrect.

[12] The disclosure that the payments were made by EFT may have persuaded the defendant that there was nothing amiss. In *Wolmarans*, there was trenchant criticism by Desai J, who delivered the judgment of the court, that the defendant in that matter had made no inquiries about the form of payment. That criticism cannot be levelled at the defendant in this matter. Had he been informed that payment had been made by cheque, as it had been, he may well have been alerted to what Mr Essa was up to, but he was incorrectly advised by the plaintiff.

[13] The defendant has disclosed in crystal clarity what his defence is. I cannot find that it is not bona fide as many of the facts disclosed by him are not challenged by the plaintiff. The plaintiff alleges that it discloses no defence in law. I am not persuaded

¹ ABSA v Wolmarans (30763/03) [2010] ZAWCHC 33 (24 February 2010).

that is the case. In *Wolmarans*, the court found that the plea of estoppel would fail if the defendant would probably have become aware of the true facts upon making a proper enquiry.² It seems to me that the defendant did make a proper enquiry in this matter and he did not discover the true facts. Why that is the case can best be ascertained by allowing the matter to go to trial. Whether the defence succeeds at trial remains to be seen but for the purposes of summary judgment I am satisfied that it passes muster.

[14] I accordingly grant the following order:

- (a) The application for summary judgment is refused;
- (b) The defendant is given leave to defend the action;
- (c) Costs are reserved for determination by the trial court.

MOSSOP AJ

² At para 21.

APPEARANCES

Counsel for the applicant	:	Mr J. Eastes Instructed by: Delport van den Berg Inc. Care of Shepstone and Wylie 15 Chatterton Road Pietermaritzburg
Counsel for the respondent	:	Mr A. C. Roestorf Instructed by: Maharaj Moodley Attorneys 348 Rivonia Boulevard Rivonia Care of: Hay and Scott Attorneys 1 George MacFarlane Lane Pietermaritzburg
Date of Hearing	:	16 November 2021
Date of Judgment	:	16 November 2021