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IN THE HIGH COURT OF SOUTH AFRICA**(WESTERN CAPE, HIGH COURT)****CASE NUMBER**

14552/2010

DATE

31 AUGUST 2010

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In the matter between:

VOLSWAGEN FINANCIAL SERVICES**A DIVISION OF WESBANK****A DIVISION OF FIRSTRAND BANK LTD**

Applicant

10 and

ELROY PAUL GEZWINT

Defendant

J U D G M E N T

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BOZALEK, J:

In this summary judgment application the applicant, a vehicle sale financier, is the seller in terms of an instalment sale agreement of a motor vehicle and seeks cancellation of the instalment sale agreement and the return of the vehicle from the purchaser who is admittedly in substantial arrears with his monthly instalments.

25 The defence raised at some length by the defendant, is that he

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has applied for a debt review in terms of the National Credit Act, No. 34 of 2005 ("the Act") and the application is due to be heard in the Magistrate's Court on 22 September 2010, i.e. in just under two months' time.

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In argument, Mr Wessels for the plaintiff/applicant points out that it appears from the papers that the applicant terminated the debt review process in terms of Section 86(10) of the Act after more than 60 days following receipt of notification of the
10 debt review process from the respondent and thereafter the applicant issued summons on the debt after the expiry of a further 10 days.

Mr Wessels relied on the recent judgment of Binns-Ward, J
15 in Wesbank vs Martin delivered on 13 August 2010. I have considered this judgment, the facts of which are on all fours with those in the present matter, and am in agreement with the main conclusions reached therein by the learned judge.

20 Mr Holland, for the respondent, did not seek to dispute the applicability or ratio of the judgment. He confined his argument to the submission that the notifications by the credit provider to the National Credit Regulator and the debt counsellor did not comply with the requirements of the Act, in
25 that they spoke only of an "intention" to terminate the debt
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review.

I do not consider that this submission has any merit for several reasons:

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1. I am satisfied that, properly construed, the applicants notices to those two parties indicated clearly that it was terminating the debt review process and not merely considering this step;

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2. although section 86(10) refers to a notice "in the prescribed form" there is in fact no such prescribed form;

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3. in Wesbank vs Martin it was made clear that it is not the notice alone which terminates the debt review process, but the subsequent institution of proceedings for the recovery of the debt.

The timetable in the present matter is as follows:

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1. on 18 November 2009, the defendant applied for a debt review;
2. on 11 June 2010 and more than 60 days after the application for debt review, the plaintiff sent notices in

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terms of section 86(10) to the defendant, his debt counsellor and the National Credit Regulator;

3. on the 7 July the plaintiff issued its summons - that
5 was more than 10 days after the delivery of the aforesaid notices;

4. on the 16 July the summons was served;

10 5. on 3 August the plaintiff served its application for summary judgment;

6. only thereafter on the 25 August 2010 did the debt counsellor and defendant issue an application for a
15 debt restructuring order.

There is no explanation before me as to why the debt counsellor was so tardy in issuing an application for a debt restructuring order.

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In the circumstances, I do not consider that the respondent has established a *bona fide* defence to the main relief sought by way of summary judgment, namely cancellation, the return of the motor vehicle and the following order is therefore made:

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Summary judgment is **GRANTED** and it is ordered that:

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1. Cancellation of the agreement is confirmed.
2. The defendant is to deliver the goods, being a 1999
Opel Astra with engine number 20SEH25015745 to the
plaintiff.
3. The relief sought in prayers (c) and (d) of the Plaintiff's
Particulars of Claim will stand over for later
determination.
4. The defendant is to pay the costs of the application for
summary judgment on the scale as between party and
party.



BOZALEK, J