IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

Case Number: 13199/2011

13201/2011

13200/2011

In the matter between:

The Motor Finance Corporation (Pty) Ltd **Applicant**

and

Reon Russell Heckrath **Respondent**

JUDGMENT DELIVERED ON 7 NOVEMBER 2011

Baartman, J

[1] On 23 September 2011, I granted summary judgment in matters 13201/2011, 13200/2011 and 13199/2011 ordering the return of three motor vehicles: 1x 2005 Volkswagen Touran 1.9, TDi Trendline DSG; 1x 2002 BMW 330i, CI Convertible A/T (E46) and 1x 2003 BMW X5 3.Od sport A/T. These are my reasons.

[2] The applicant had in 3 separate agreements sold the motor vehicles to the respondent. Similar disputes arose in all 3 matters and the

respondent filed identical opposing papers in all 3 matters. Therefore, these reasons apply to all 3 matters.

[3] The respondent had fallen in arrears with payments in terms of the instalment agreements causing the applicant to cancel the agreements and claim return of the vehicles. The respondent did not dispute his default but instead based his opposition to the application for summary judgment on the following allegations:

(a) the agreements had not been cancelled;

(b) the applicant was not entitled to have terminated his debt review;

(c) the respondent was entitled to apply for an order in terms of section 86(11) of the National Credit Act 34 of 2005 (**the NCA**).

[4] Below, I deal with the defences in turn:

CANCELLATION OF THE AGREEMENT

[5] In his opposing affidavit, the respondent alleged the following:

"... As far as I am aware, this agreement has never been cancelled by the applicant. ... I never undertook to surrender the goods and thus I submit that the contract was not correctly cancelled. I merely received a notice of termination."

[6] The applicant had in the summons alleged that the respondent was in default and it had therefore cancelled the agreements through the service of the summons. In terms of paragraph 15.1.4 of the agreement between the parties, the applicant may upon the respondent's default:

"15.1.4 Cancel this agreement, take possession of the Goods and claim from you either an amount equal to the amount paid out to you in terms of the Insurance Policies, or claim from you an amount

equivalent to the Outstanding Balance less the market value of the Goods as at the date of cancellation of the Agreement."

[7] In my view, the opposition on this ground was without merit.

TERMINATION OF DEBT REVIEW

[8] On 16 February 2011, the defendant applied for debt review. On 14 June 2011, the applicant sent a notice in terms of section 86(10), more than 60 business days after the application for debt review. The respondent was in arrears when the notice was sent. In my view, this ground of opposition was also without merit (**Collett v FirstRand Bank Ltd** 2011 (4) SA 508 (SCA)).

APPLICATION IN TERMS OF SECTION 86 (11)

[9] The respondent indicated that he intended to approach the court for relief in terms of section 86(11) of the NCA. The section provides:

"If a credit provider who has given notice to terminate a review as contemplated in Sub-Section (10) proceeds to enforce that agreement in terms of C of chapter 6, the Magistrates Court hearing the matter may order that the debt review resume on any conditions the court consider to be just in the circumstances."

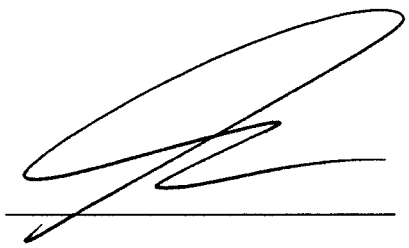
[10] In terms of each agreement, the applicant is entitled to the return of the vehicle once that contract has been cancelled. The respondent claimed the right to retain the vehicles as follows:

"My income of R20 000.00 is derived from a taxi business that I have. This is the reason why I need the vehicles and why I will request that the vehicles are not to be returned or attached, as it is my source of income. In the event of the vehicles being taken away, I will have no income at all, as the vehicles are my sole source of income".

[11] In terms of the respondent's proposal, he would settle his indebtedness in respect of the vehicles over a 13–14 year period. Advocate Wessels, who appeared for the applicant, submitted that the vehicles were the applicant's only source of security and submitted that the respondent's request would compromise that security. I agree. In my view, the circumstances of this matter are such that allowing the respondent to retain possession of the vehicles would have amount to an abuse of the process. (See **BMW Financial Services (SA) (PTY) Ltd v Donkin** 2009 (6) SA 63 KZD).

CONCLUSION

[12] I concluded that the respondent did not have a *bona fide* defence to the applications for summary judgment and granted judgment as indicated above.



Baartman,J