IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NO: 10321/2010

In the matter between:

MERCEDES-BENZ FINANCIAL SERVICES SOUTH AFRICA (PTY) LTD Applicant

and

DIRK ARNO COETZEE Respondent

JUDGMENT: 22 FEBRUARY 2011

KATZ AJ

1. In this interlocutory application, the Applicant, Mercedes-Benz Financial Services South Africa (Pty) Ltd (*"Mercedes-Benz"*), seeks an order against the Respondent, Dirk Arno Coetzee (*"Mr Coetzee"*), to the effect that a 2007 Mercedes Benz C280 Elegance (*"the Mercedes"*) be delivered to it within a short period of time *"for safe keeping pending the finalisation of an action to be instituted"*.

2. Mercedes Benz seeks an interim attachment of the Mercedes.

3. The question of what effect, if any, the provisions of the National Credit Act 34 of 2005 ("the NCA") have on the law relating to the interim

attachment of goods pending the outcome of vindicatory or quasi-vindicatory proceedings has recently been discussed in *SA Taxi Securitisation (Pty) Ltd v Chesane*.[1]

4. *Chesane* accepted that at common law the interim attachment of goods *pendente lite* is well established.[2] There is no indication in the NCA that the common law position regarding interim orders has been altered in any way. The purpose of an interim attachment order is to protect the owner of the goods against deterioration and damage pending the finalisation of the main proceedings between the parties. An interim attachment order is not to enforce remedies or obligations under the credit agreement, and the remedy is not integral to the debt enforcement process under the NCA.[3]

5. Bearing in mind that applications for interim attachment orders are not directly affected by the provisions of the NCA, the usual rules applying to interim applications govern.

6. Thus for Mercedes Benz to succeed in this application for an interim attachment order, it needs to demonstrate that the balance of convenience favours the granting of interim relief; that it has a right which it seeks to enforce which is clear or, if it is not clear, is *prima facie* clear although open to some doubt; if the right is only *prima facie* established there is a well-grounded apprehension of irreparable harm

1 2010 (6) SA 557 (GSJ).
2 *Morrison v African Guarantee & Indemnity Co Ltd* 1936 (1) PH M35 (T); *Loader v De Beer* 1947 (1) SA 87 (W); *Van Rhyn v Reef Developments A (Pty) Ltd* 1973 (1) SA 488 (W) at 492.
3 Fourie J for the Full Bench in *ABSA (Ltd) v De Villiers and Another* 2009 (5) SA 40 (C) emphasised that his judgment dealt with a final order authorising the attachment of the subject vehicle and not for relief *pendente lite* at paras [6] and [17].

if the interim relief is not granted; and that it has no other satisfactory remedy.

7. The procedural history to this matter is unfortunate and Mercedes-Benz may have to accept some responsibility in respect of the procedural mishaps. I do not deal separately or in detail with these missteps.

8. During the hearing, **Mr J Louw** instructed by Ms Venter of Ballsillies Strauss Daly Attorneys appeared on behalf of Mercedes-Benz, whilst **Mr Kulenkampff**, an experienced attorney of this Court appeared on behalf of Mr Coetzee.

9. Both Mr Louw and Mr Kulenkampff argued with vigour and acquitted themselves with a measure of competence during the proceedings. I thank both of them for their thorough research and spirited argument on issues which sometimes appeared simpler than they in fact were. Indeed, during the argument, a number of issues were raised by both parties and by me which appeared to have substance, but in fact did not.

10. The parties entered into a contract on 12 November 2007 in terms of which Mercedes-Benz, expressly referred to as the owner, sold the Mercedes to Mr Coetzee as the buyer (*"the contract"*).[4] The contract included provisions as to the circumstances in which a party to the contract was entitled to cancel the contract and also that Mercedes-

4 The contract was an instalment sale agreement and thus subject to the provisions of the NCA.

Benz would retain ownership of the Mercedes until such time as the full amount was paid by Mr Coetzee.

11. Mr Coetzee came into possession of the Mercedes some time prior to the entering into of the contract. Malmesbury Motors had delivered the Mercedes to Mr Coetzee earlier than the date of the contract and as a consequence, Mr Kulenkampff argued that Mercedes-Benz had not demonstrated that, as a matter of law, they were the owners of the Mercedes.

12. Due to the manner in which the matter has been pleaded, I do not need to deal with Mr Kulenkampff's point on ownership because I must find that Mercedes-Benz is the owner of the Mercedes. I deal with that issue below.

13. In saying so, I do not discount the fact that Mr Coetzee had taken the ownership point previously in one of the earlier skirmishes between the parties. However, the ownership point was not raised in the affidavits, which govern my consideration of the application.

14. After the parties had entered into the contract during November 2007, in late 2008, Mercedes-Benz addressed a letter to Mr Coetzee effectively complaining that he was in arrears with his instalment payments and they requested him to comply with the terms of the contract.

15. Notwithstanding that situation, Mr Coetzee, so it seems, continues to

be heavily in arrears as far as payments to Mercedes-Benz in terms of the contract is concerned, but enjoys the possession of it.

16. The simple point is that as long ago as December 2008, Mr Coetzee found himself in arrears, but has continued to drive a luxury motor vehicle.

17. The next step in the saga was that on 7 April 2009, Mercedes-Benz issued summons under case number 7661/09 (*"the first summons"*) against Mr Coetzee in this Court. In the particulars of claim, Mercedes-Benz sought orders confirming the termination of the agreement return of the Mercedes and payment of certain monies which it claimed were outstanding.

18. Importantly, for purposes of this application, is that which is pleaded in paragraph 14 of Mercedes-Benz's particulars of claim. It states:

> *"Due to the Defendant's breach of agreement the Plaintiff terminated the agreement, alternatively the agreement is terminated herewith"*.

19. In response to the first summons, Mr Coetzee, through Mr Kulenkampff, filed a plea on 21 September 2009.

20. In Mr Coetzee's plea, he takes issue with almost everything he can concerning the Plaintiff's particulars of claim. However, it is important

to note what is stated in paragraph 8.2 of his plea:

> *"The Defendant admits that he has failed to pay certain instalments in terms of the agreement and that the arrears on 14 March 2009 were in the sum of R49 364-56"*.

21. The first summons was withdrawn.

22. In January 2010, a letter dated 23 December 2009 was sent from Mercedes-Benz to Mr Coetzee in which he effectively was put to terms that if he, *inter alia*, did not pay the arrears, Mercedes-Benz would cancel the contract and seek return of the Mercedes.

23. The difficulty that arose was that various divisions of the High Court had made different pronouncements concerning certain provisions of the NCA concerning the requirements for compliance with section 129(1) read with section 130(1) of the NCA.

24. The debate concerned whether registered or ordinary mail was required in respect of notices under the section.

25. The dispute between the different High Courts was resolved by the SCA in *Roussouw and Another v Firstrand Bank Ltd t/a FNB Home Loans (formerly FirstRand Bank of South Africa Ltd)*.[5]

26. The next step in the saga was for Mercedes-Benz to issue a second

5 [2010] ZASCA 130 (30 September 2010), 2010 (6) SA 439 (SCA).

summons under case number 4604/10 (“the second summons”). The second summons was issued during the first quarter of 2010.

27. On the basis of the second summons, Mercedes-Benz applied for summary judgment and on 20 April 2010, Mr Coetzee filed an affidavit in opposition to the application for summary judgment. Mr Coetzee raised the point that notice in terms of section 129 of the NCA had not been complied with. The argument related to the distinction between the notice being sent by registered mail as opposed to by ordinary mail.

28. In his opposition to summary judgment, he also took various points including that Mercedes-Benz was not the owner of the Mercedes. His version was that Malmesbury Motors was the owner of the Mercedes. He went on to state in his affidavit that in his view the contract was void. He said that the contract was void because he claimed that the enforceability of the contract relied upon by Mercedes-Benz was predicated upon Mercedes-Benz being the owner of the Mercedes, which he had claimed was untrue.

29. He also complained in his answering affidavit in the summary judgment application about how various documents apparently sent by Mercedes-Benz had not arrived at his premises. Once again, one got the distinct impression that if there was a point, good, bad or indifferent, to be taken, Mr Coetzee would have taken it.

30. By saying that, I do not mean, and I must not be taken to mean, that

any litigant is not entitled to take every point that may assist him. On the contrary, some of the most apparently speculative points have met with success in these Courts. However, when one has regard to the global picture facing Mr Coetzee, it cannot be ignored that he bought a luxury motor vehicle in November 2007. The motor vehicle was not merely functional, but was a luxury Mercedes C280 Elegance (an almost new demonstration model), which is worth hundreds of thousands of rands. It does seem unusual and untenable as Mr Louw argued, for a person in those circumstances to then default on instalment payments as long ago as before December 2008 and yet, in February 2011, when this application was argued, to still be driving the luxury Mercedes whilst continuing to be heavily in arrears.

31. The above arguments and debates notwithstanding, however, the second summons was also withdrawn.

32. Mercedes-Benz averred in its founding papers in this interim attachment application that the total amount outstanding as at 5 February 2010 was R409 538.82. That was not denied by Mr Coetzee.

33. Mercedes-Benz, although having sent the first summons purportedly cancelling the agreement, sent a letter dated 23 December 2009 to Mr Coetzee in January 2010 and again in April 2010. Some time before 10 May 2010, Mr Coetzee claimed, correctly it appears, that he responded to the letters which had been sent to him in terms of section 129 read with section 130 of the NCA, by approaching a debt counsellor and applying for debt review in terms of section 86 of the

NCA.

34. The argument was that any purported cancellation could not have taken place in terms of the agreement because the agreement itself only allowed for cancellation by Mercedes-Benz if Mr Coetzee did not react to an invitation to debt counselling or an alternative dispute resolution agent or the Consumer Court or the Ombudsman.

35. Mr Kulenkampff argued the letters sent threatening cancellation were cynical because on Mercedes-Benz's own version they had already cancelled the contract as long ago as April 2009 in the first summons and to send the further letters in January 2010 and April 2010 threatening cancellation in respect of a contract which had already been cancelled was inappropriate and should incur my displeasure.

36. During argument, Mr Louw, correctly in my view, accepted that the sending of the two further letters was unnecessary and nonsensical if it was accepted that cancellation took place by way of the first summons in April 2009. To my mind, the submission by Mr Louw is well made but ultimately, nothing turns on the point. Either as a matter of law and fact the contract had been cancelled, or it had not. The fact that Mercedes-Benz sent letters which were inappropriate, unnecessary and nonsensical does not take the matter further.

37. To the extent that it is suggested, as it is by Mr Coetzee, that Mercedes-Benz has demonstrated inappropriate conduct, I may deal

with that issue in any costs order that could flow from the consequences of any decision that I make in this matter.

38. Be that as it may, on 21 May 2010, Mercedes-Benz approached this Court on an urgent *ex parte* basis for a rule nisi in respect of an interim attachment order. A rule was issued on 25 May 2010 on an *ex parte* basis.

39. In the founding papers, not a word is mentioned why the application was urgent and similarly, no averment was made as to why the application should be heard *ex parte.* For example, there is no allegation that if service of the application were to have been effected, that would have defeated its object and purpose.

40. The application simply was not urgent, at least not extremely urgent and there certainly was no basis made out for the application to have proceeded on an *ex parte* basis. Notwithstanding my views on this issue, which it seems were shared by both Mr Louw and Mr Kulenkampff, an *ex parte* order was granted.

41. Although the *ex parte* order was granted, as it turned out for reasons which are not immediately apparent, the order was not put into effect. More precisely, the portion of the order obliging Mr Coetzee to return the Mercedes for safe keeping to Mercedes-Benz pending the return day of the *rule nisi* was suspended.

42. It should also be mentioned that the order included a paragraph which

stated:

> *"That the Applicant is ordered and directed to institute action against the Respondent within 60 (sixty) days from date hereof"*.

43. As it turned out, Mercedes-Benz did not institute action against Mr Coetzee within sixty days, or to date.

44. The submission by Mr Louw as to why institution of the action has not yet occurred was that the suspension of the order, in the view of Mercedes-Benz, was a good reason why it could not and should not institute action until the finalisation of this interim attachment application.

45. Mr Kulenkampff argued, correctly in my view, that the order did not prohibit or bar Mercedes-Benz from instituting action within sixty days, or at all and in his view, there was non-compliance with the order by reason of the failure of Mercedes-Benz to institute action within sixty days. He submitted it may well have constituted contempt of court for Mercedes-Benz to have not complied with that portion of the order.

46. My view is that there was nothing to prevent Mercedes-Benz from instituting action and the fact that they may have misread or misunderstood the order is only an issue which may affect any costs order I may make. I do not accept Mr Louw's argument that because the order had been suspended, Mercedes-Benz was not entitled to

institute action. I accept that Mercedes-Benz's attitude in this regard was not *mala fide*, but merely a wrong interpretation of the law and the order.

47. Because the order was suspended, a number of procedural issues flow therefrom.

48. Mr Coetzee elected to bring an application under Rule 6(12)(c) for a setting aside of the order granted *ex parte*. He argued that because an order had been taken *ex parte* against him, he was entitled to apply for it to be reconsidered. His argument was that for various reasons, the order should not have been granted and that it should be set aside under Rule 6(12)(c). In the event, the Rule 6(12)(c) application became academic because the order was not executed. Mr Coetzee changed tracks and requested his Rule 6(12)(c) affidavit to constitute his opposing affidavit in the main interim attachment order application.

49. During the hearing, I asked Mr Kulenkampff what would happen if I concluded that Mr Coetzee's Rule 6(12)(c) affidavit was not sufficient to meet the main application. His answer, appropriately in my view, was that his client would have to *"live with the consequences"*.

50. Accordingly, I was confronted with effectively two sets of papers (viz Mercedes-Benz's founding affidavit and Mr Coetzee's Rule 6(12)(c) *"answering affidavit"*) bearing in mind Mercedes-Benz's election not to file a *"replying affidavit"* in response to Mr Coetzee's Rule 6(12)(c) *"answering affidavit"*.

51. I am called upon to decide whether on the facts set out in the two sets of affidavits, Mercedes-Benz is entitled to relief ordering Mr Coetzee to return the Mercedes to Mercedes-Benz for safe keeping pending the finalisation of an action to be instituted by Mercedes-Benz.

52. The Rule 6(12)(c) answering affidavit and Mr Kulenkampff in oral argument and in written heads of argument, raised a number of issues in opposition to the application.

53. It was not suggested that the balance of convenience favoured Mr Coetzee. Indeed, no facts of any kind were put up by Mr Coetzee why he requires possession of the Mercedes. On the other hand, Mercedes Benz averred that the return of the Mercedes *pendente lite* protects the asset (the Mercedes) from damage or depreciation. It is suggested that the Mercedes could be damaged, lost, stolen or wrecked in a collision and that the prejudice it would suffer far outweighs any prejudice Mr Coetzee would suffer were the Mercedes to be returned *pendente lite*.

Mr Coetzee simply failed in his pleading to respond to those averments. He put up no evidence that, for example, he requires the Mercedes for employment purposes or to transport minor children and that he would suffer any prejudice whatsoever were the Mercedes to be returned to Mercedes Benz *pendente lite*. That the balance of convenience weighs heavily, on the pleadings, in favour of return of the vehicle *pendente lite* is an important factor in the exercise of my

discretion.[6]

54. As oral argument developed, a number of defences raised by Mr Kulenkampff effectively fell away, and the points I ultimately had to decide boiled down to three in total.

55. First, I must decide whether Mercedes-Benz on the facts were entitled and in fact did cancel the agreement, secondly whether Mercedes-Benz could be regarded as owners of the Mercedes. If both those points fail, I am to consider in any event whether I should rule in favour of Mr Coetzee.

56. The third point is one which is an alternative to the first two. The point is that in the *ex parte* urgent application, Mercedes-Benz conducted themselves in a manner contrary to the requirements of *uberrima fides* as set out in the matter of *Schlesinger v Schlesinger*.[7]

57. Mr Kulenkampff argued, correctly in my view, that *ex parte* applications have to be decided on a one-sided version of events and an applicant who approaches a court for relief on an *ex parte* application has a duty to disclose each and every fact and circumstances which might influence the court in deciding to grant and withhold the relief.

58. Mr Louw argued that Mr Coetzee was precluded from now raising the *Schlesinger* point because the Rule 6(12)(c) application was no longer

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6 *Olympic Passenger Service (Pty) Ltd v Ramlagan* 1957 (2) 832 (D) at 383C-G.
7 1979 (4) SA 342 (W), see also *Powell N.O. and Others v Van der Merwe N.O. and Others* 2005 (5) SA 622 (SCA), (per Southwood AJA) at paras [74] – [75] and *The National Director of Public Prosecutions v Braun and Another* 2007 (1) SACR 326 (C).

alive.

59. On this issue I disagree with Mr Louw and during argument, I put it to him that if (hypothetically) a party behaved in an appalling manner and it had become clear that it had purposefully and wilfully misled a court in the most extreme and intense circumstances, would a court on the return day or a later date in the same application, not have a discretion to come to the assistance of the other party. Mr Louw eventually accepted that even though the Rule 6(12)(c) application was no longer alive, I nevertheless had a discretion to come to the assistance of Mr Coetzee on the *Schlesinger* principles.

60. Before turning to the substance of the cancellation and ownership points, I find it necessary to comment on a submission made by Mr Kulenkampff during argument. This submission, which ultimately fell away, related to statutory defences that Mr Coetzee may have under the NCA.

61. The argument, if I understood it correctly, was that because Mr Coetzee was now subject to debt counselling and debt review under the NCA, it would be inappropriate for this Court effectively to involve itself in those processes by making an order for the return of the Mercedes and thereby interfere with the debt review process.

62. Mr Kulenkampff argued that Mr Coetzee was subject to this process and I should respect that process. That was the philosophy behind the

debt counselling and debt review relief processes set up by the NCA. In developing his argument, Mr Kulenkampff commented that Mr Coetzee was *"a slave to Mercedes-Benz*". As I understood the argument, Mr Coetzee was forced to drive the Mercedes in the circumstances prevailing because he was now part of the debt counselling/review process.

63. In considering this submission, I cannot help but take judicial notice of the fact that many persons in this country are in reality, effectively dependent on public transport which, in many instances, may be regarded as partially or wholly dysfunctional. It is inappropriate for Mr Coetzee to consider himself a slave to Mercedes-Benz. It is insensitive at best. What I highlight is the unfortunate attitude displayed by Mr Coetzee in this matter. He cannot afford a Mercedes vehicle of the kind he drives, yet does not appreciate that if a person cannot afford to drive a luxury motor vehicle, then that person cannot keep a luxury motor vehicle. No person has a right to a motor vehicle, let alone a luxury Mercedes at that. There is no reason why that sentiment ought not to apply with equal force in an interim situation. A person cannot expect to be entitled to enjoy driving a luxury Mercedes while litigation with a bank or finance house over the ownership and other issues in relation to that vehicle is pending.

64. I turn now to the cancellation and ownership defences.

65. During argument, allegations flew back and forth on the question of whether the points had been properly pleaded from both sides. For

example, Mr Kulenkampff argued that it had never been pleaded that cancellation had taken place. Mr Louw argued that the issue of ownership had not been pleaded by Mr Coetzee.

66. Whilst I find on the pleadings against Mr Coetzee on both points, I would nevertheless say that there is much to be said for the arguments raised by Mr Louw in respect of both the cancellation and ownership defences.

67. On the ownership issue, it would be absurd, in my view, to suggest that Mercedes-Benz was and is not the owner of the Mercedes in the circumstances. Mr Coetzee entered into a contract in which Mercedes-Benz was described as the owner of the Mercedes and there was an express term that Mercedes-Benz would continue to be the owner of the Mercedes until such time as Mr Coetzee has paid his last instalment.

68. During argument, Mr Kulenkampff suggested that Malmesbury Motors, for reasons relating to the issue of possession and transfer of possession, were the owners.

69. There is no evidence that Mr Coetzee has attempted to offer any money to Malmesbury Motors. Malmesbury Motors were not cited as a party in these proceedings by any of the parties. More particularly, Mr Coetzee did not take a non-joinder point in respect of Malmesbury Motors. If Mr Coetzee was serious about the Malmesbury Motors'

point, which he has known about or suggested for almost two years, then surely he would have brought an application for non-joinder, or indeed, served the papers on Malmesbury Motors. Indeed, in his own section 6(12)(c) application, he elected to not cite Malmesbury Motors. The only conclusion one can draw is that his denial of Mercedes-Benz's ownership of the Mercedes is cynical at best. If he was serious about the ownership defence, he would, as he could easily do, cite, join or serve Malmesbury Motors. Also, there is no suggestion that Malmesbury Motors has been paid a cent.

70. I do not make a finding for purposes of the trial that Mercedes-Benz is the owner and that Malmesbury Motors is not. All I need to do at this stage is make a *prima facie* ruling in respect of the interim situation concerning the possession of the Mercedes. To conclude on the ownership point, I am satisfied for the purposes of this application for an interim attachment order that Mercedes-Benz is the owner of the Mercedes.

71. Turning to cancellation, Mr Louw accepted that if cancellation had not been proved, then I would be precluded from making the order he seeks. His submission is that it is indeed necessary for Mercedes-Benz to have cancelled the contract in order to obtain an order compelling Mr Coetzee to hand the Mercedes over for purpose of safe keeping pending the finalisation of the action to be instituted.[8] Mr Louw argued that cancellation had in fact taken place for a range of reasons.

8 *Steyn's Foundry (Pty) Ltd v Peacock* 1965 (4) SA 549 (T); *First Consolidated Leasing and Finance Corporation Ltd v N M Plant Hire (Pty) Ltd* 1988 (4) SA 924 (W).

It should be noted that in the Rule 6(12)(c) affidavit, Mr Coetzee did not aver that cancellation had not occurred.[9]

72. While there is much to be said for a number of his arguments, I accept that at the very least the first summons, from which I have quoted above, caused the contract to be cancelled. The pleading was unequivocal and Mercedes-Benz made its intention known effectively to Mr Coetzee that it was cancelling the contract. It did so in terms of the contract.

73. I also agree with Mr Kulenkampff, with whom Mr Louw concurred, that the further letters which I have referred to above should not have been written and they were inappropriate.

74. The remaining task is for me to deal with Mr Coetzee's *"Schlesinger"* point.

75. Under *Schlesinger*, I have a discretion. To my mind, that discretion must be exercised balancing the rights of the parties on the one hand and on the other, the harm to the rule of law if unlawful conduct is not visited with an appropriate sanction.

76. Thus, if the conduct of Mercedes-Benz complained of by Mr Coetzee is found to be egregious,[10] and the harm to Mr Coetzee would be

9 Although Mr Coetzee did suggest that cancellation had not taken place in his affidavit opposing summary judgment which was annexed to his Rule 6(12)(c) affidavit, he did not incorporate by reference those averments contained in his summary judgment affidavit.
10 Cf *Van der Merwe v Taylor N.O. and Others* 2008 (1) SA 1 (CC), the minority judgment of Mokgoro J, and particularly at footnote 20 and paras [70] – [72].

substantial, then I ought to be less inclined to come to the assistance of Mercedes-Benz. And vice versa.

77. On the facts, Mercedes-Benz's conduct, whilst perhaps open to some criticism, cannot by any stretch of the imagination be regarded as egregious. Perhaps it should have set out a fuller history of the procedural issues arising in its founding affidavit in the *ex parte* application. If it had, the Judge hearing the *ex parte* application might, and I put it no higher, have required more information from Mercedes-Benz or indeed have refused the application. The papers were drafted in a less than perfect manner. I cannot find that Mercedes-Benz set out to deliberately mislead the Court.

78. In the circumstances, I do not find there is conduct to warrant me applying the *Schlesinger* test against Mercedes-Benz.

79. At the hearing, Mr Louw handed up a draft order. I was not satisfied with it and the Court's Registrar thereafter requested the attorney to furnish details as to whom and where Mr Coetzee is to deliver the Mercedes if I were to order its return. She did so, and I incorporate certain of those details into the order.

80. Whilst there may be something to be said for not awarding costs in Mercedes-Benz' favour arising from the difficulties alluded to in this judgment, I am not persuaded on the evidence available that Mercedes-Benz should forfeit its costs. On the other hand, it may well turn out at the trial that Mercedes-Benz should not be awarded the

costs of this application. It would be unfortunate in those circumstances if I had already awarded costs one way or another. I have thus decided that costs of this application are to be determined by the trial court unless, for whatever reason, Mercedes-Benz fails to institute action timeously. Bearing in mind the lengthy history of this matter, I have decided that the time periods suggested by the parties are not appropriate, and I impose a stricter timetable, both on Mercedes-Benz and Mr Coetzee.

81. The following order is granted:

(i) Mr Dirk Arno Coetzee or whoever may be in possession of the 2007 Mercedes Benz C280 Elegance A/T(W204) with engine number 27294730669410 and chassis number WDD2040542R002121 (*"the Mercedes Benz"*) shall return it to Mercedes-Benz Financial Services South Africa (Pty) Ltd at Aucor Auction Centre, 17 Dacres Avenue, Epping by **10h00** on **Thursday 24 February 2011** for safe keeping pending the finalisation of the action to be instituted as referred to paragraph 2 below.

(ii) Mercedes-Benz Financial Services South Africa (Pty) Ltd shall institute an action against Mr Coetzee in respect of the Mercedes Benz by no later than **Monday 14 March 2011**, failing which Mr Coetzee shall be entitled to the immediate return of the Mercedes Benz.

(iii) Costs are to stand over for later determination, unless an action as contemplated by paragraph 2 above is not instituted by **Monday 14 March 2011**, in which event the costs of this application are to be borne by Mercedes-Benz Financial Services South Africa (Pty) Ltd.

BY ORDER:

KATZ AJ