REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED.

26/6/2023 ....
DATE SIGNATURE

Case no.: **2021/8946**

In the matter between:

GMSA FINANCIAL SERVICES, A PRODUCT OF WESBANK FIRSTRAND LIMITED, A DIVISION OF FIRST RAND BANK	**APPLICANT**

And

JASON RICHARDSON	**RESPONDENT**

Coram:	Dlamini J
Date of request for Reasons:	08 June 2023
Delivered:	26 June 2023

JUDGMENT

DLAMINI J

INTRODUCTION

[1] On 13 April 2023, I made a draft order marked "X" an Order of this Court, The following are the reasons for that Order.

[2] This an application for Summary Judgment wherein the applicant seeks the following relief;-

2.1 Cancellation of the agreement.

2.2 An order directing the respondent to deliver to the applicant the 2015 OPEL CORSA 1,0 T ECOFLEX ENJOY 5DR.

2.2 The claim for damages to be postponed sine de

2.4 Cost of suit.

BACKGROUND FACTS

[3] Briefly summarized, the applicant had on 17 August 2017 entered into a sale agreement with the respondent for the purchase of the Opel Corsa motor vehicle with the respondent. In terms of the agreement, the respondent agreed to pay the applicant for the goods in 71 installments. The applicant avers that

the respondent has failed and or refuses to make payments as agreed between the parties. As a result, the applicant launched these proceedings to reclaim the said Opel Corsa.

[4] After the respondent had filed a notice to oppose, the applicant launched this application for Summary Judgment. The applicant insists that it is entitled to the relief that it seeks based on what it set out in these papers and that the respondent defences set out in his affidavit resisting Summary Judgment are not *bona fide*, they are not set out fully, they bald and stand to be dismissed.

[5] This application is resisted on various grounds by the respondent.

[6] Firstly, the respondent submits that the applicant has failed to conduct an assessment verifying whether the respondent qualifies for the credit, thus failing to comply with the National Credit Act[1] (the NCA) by granting the respondent credit recklessly and negligently. That even if such an assessment was conducted such assessment would have revealed that the respondent was at that time non-qualifying for credit as a result of his over-indebtedness.

[7] Secondly, the respondent insists that the applicant has failed to comply with the preliminary requirement of delivering a section 129 and 130 notice to the respondent prior to proceeding with the summons. According to the respondent, a prior demand was required before the debt became payable. The respondent insist that no such prior notice was received by him.

LEGAL PRINCIPLES

[8] The principles regarding Summary Judgments are well established and have been illustrated in many judgments.

[9] In terms of rule 32(3)(b) an affidavit resisting Summary Judgment must disclose fully the nature and grounds of the defendant's defence and the material facts relied upon thereof.

[10] In *Maharaj v Barclays National Bank Limited* 1976 (1) SA 418 at 426 A-D the Court set out the principle as follows or stated that in the assessment of a defendant's defence in Summary Judgment proceedings, all that the Court enquires into is first whether the Defendant has fully disclosed the nature and grounds of her defence and the material facts upon which it is founded, and secondly, whether on the facts so disclosed, the Defendant appears to have, as to either the whole or part of the claim, a defence which is bona fide and good in law.

[11] Indeed it is correct, that whilst a defendant in Summary Judgment proceedings is not expected to set out his or her defence with the particularity required of a plea, however, the defendant must at least provide the Court with facts which, if proved at trial would constitute a defence to the plaintiffs claim.

[12] I now turn to deal with the defendant's two defences.

[13] The allegations by the defendant of lending recklessness by the plaintiff are bald, unsubstantiated, and must be dismissed. This is so because the defendant has not attached any evidence to corroborate its claim. The defendant has not attached his salary advice, income, and expenditure account, and bank statement to substantiate his claim that at the time of the granting of the sale agreement by the plaintiff, his financial situation was such that he will be unable to repay the installment and was over-indebted. Therefore this defence must fail.

[14] The submission by the defendant that the plaintiff has not complied with the provisions of sections 129 and 130 of the NCA is meritless and should also be dismissed. In this case, the plaintiff dispatched and sent the section 29 notice to the defendant's chosen *domicilum* at 17 Komalyn Street, Jukskei Park. This notice was sent by registered mail to the correct post office branch. Thereafter the post office sent the notification to the defendant to collect the item.

[15] No reasons have been proffered by the defendant as to why he did not collect the item. It is thus my view, that the plaintiff has fully complied with the requirements of section 129. Accordingly, this defence must fail.

[16] In all the circumstances mentioned above, the defendant has not raised any genuine or *bona fide* defence.

[17] This Court is satisfied that the plaintiff has dispatched the *onus* that rested on its shoulders and is entitled to be granted Summary Judgment.

ORDER

1. The order marked "X" that I signed on 13 April 2023 is made an order of this Court.

DLAMINI J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

Date of request for Reasons:	08 June 2023
Delivered:	26 June 2023

For the Applicant:	Adv H Salani humbulani@maisels.co.za
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