IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

20.03.2011
DATE

CASE NUMBER: 49609/10

3/3/2011

SA TAXI SECURITISATION (PTY) LTD
Applicant

vs

SKOSANA, MQOTHWA SETIE
Respondent

APPLICATION FOR SUMMARY JUDGMENT
CORAM SAPIRE AJ

JUDGMENT

This is an application set down for the 8th of February 2011 as an unopposed matter. At the hearing opposition was offered and an Affidavit had been filed on the 4th of February 2011.

The action was commenced by the service of Summons in which it was alleged that the Plaintiff, a registered credit provider in terms of the National Credit Act 34 of 2005, had entered into a Lease Agreement with the Defendant who was accordingly a consumer in terms of the Act.

The Lease Agreement provided for the Defendant to take a vehicle on hire and to make payment of amounts detailed in the Summons. The payments were to be made after the conclusion of the Agreement over a period. The Agreement also made provision for the Plaintiff's rights on default by the Defendant in the observance of its obligations under the Agreement. The Defendant did indeed breach the Agreement by failing to pay the rental due in terms of its terms, resulting in that on the 4th of August 2010 he was in arrear with his payments to the extent of R28 804,47.

In the Summons it is also alleged that the Defendant applied to have himself declared over indebted as contemplated in Section 86(1) of the National Credt Act. The outcome of this was that the debt counsellor delivered to the Plaintiff a notice as contemplated in Section 86(4)(b) (i) of the Act (Form 17.1) on the 4th of May 2010.

This Notice was followed by one received by the Plaintiff on the 11th of May 2010 in which the debt counsellor proposed a rearrangement of the Defendant's obligations. This Notice is Form 17.2.
According to the Summons the next step taken was that on the 10th of August 2010 the Plaintiff gave Notice to the Defendant, the debt

counsellor and the National Credit Regulator in the prescribed manner of its intention to terminate the debt review in terms of Section 86(10) of the Act. No mention is made in the Summons of any application made by the Defendant to the appropriate Court in terms of Section 86(7)(c).

In the Affidavit which the Defendant as Respondent in this matter, filed, there is an Annexure marked "B" which appears to be a Notice of Application in terms of Section 86 of the National Credit Act. The application is addressed to the Magistrate Court, Johannesburg giving notice that the application would be made on the 12th of October 2010. The Notice is dated the 8th day of June 2010.

This would seem to indicate that Plaintiff's Notice terminating the debt review was given at a time when an application was already pending before the appropriate court. In terms of a judgment in *West Bank vs Papier and another*, a case before the Full Court of the Western Cape High Court, delivered on the 1st of February 2011 it was held that the consumer is protected against enforcement proceedings by the Credit Provider not only once a rearrangement order has been made by a Magistrate in terms of Section 87 but also while proceedings for such an order are pending.

In view of this decision and would not be correct to grant Summary Judgment in this case.

In the case cited the order made was that the Application for Summary Judgment be stayed pending a final determination of the proceedings before the Magistrate.

As the date for hearing of the application to the Magistrate in the present case was due to be heard on the 12th of October last year such an order would be of little purpose in the present case. The papers do not reveal the outcome of the application.

The order I therefore make is:

(a) The Respondent is given Leave to Defend;

(b) The costs are to be costs in the cause;

(c) The Respondent is to file a Plea within 7 (seven) days from date of this order and

(d) The Applicant may approach the Deputy Judge President of this Court for an early trial date.

SAPIRE, A J

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