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.

27/7/11 DATE — SIGNATURE

Case Number: 34068/2010

27/7/2011

In the matter between:

STANDARD BANK — Plaintiff

vs

TRIPPLE SSS SECURITY — First Defendant

LESETJA SIMON RAMASHILO — Second Defendant

JUDGMENT

J W LOUW, J:

The plaintiff issued summons against the first and second defendants for the return of a certain Nissan truck, payment of damages, interest and costs on the scale as between attorney and client.

The plaintiff's claim arises from a written instalment sale agreement in terms of which the plaintiff sold the truck to the first defendant. The second defendant bound himself as surety for the first defendant's obligations to the plaintiff. It is alleged in the summons that the first defendant breached the agreement by failing to make the agreed payments in terms thereof which breach, in terms of the agreement, entitled the plaintiff to claim the return of the truck, damages and costs on the attorney and client scale.

It is alleged in paragraph 7 of the Summons that notice in terms of section 129 of the National Credit Act, 34 of 2005 ("the NCA") was given to the "Defendant" and that Annexure "C" is a copy of the notice. Annexure "C" however consists of notices in terms of section 129 which were sent to both the first and second defendants.

The Summons was issued on 11 June 2010. According to the Sheriffs' returns of service the Summons was served on the first defendant on 25 June2010 and on the second defendant on 23 June 2010.

The defendants signed a notice of intention to defend on 11 August 2010, which notice was then apparently faxed to the plaintiff's attorneys on 13 August 2010.

The plaintiff thereafter served and filed a notice of application for summary judgment for the relief claimed in the summons.

At the hearing, counsel for plaintiff applied for summary judgment against the defendants in terms of prayers 2 and 5 of the summons, i.e. for the return of the truck and costs on the attorney and client scale.

In the defendants' opposing affidavit, it is alleged that after the notice of intention to defend was served, the second defendant, on 12 October 2010 consulted with a debt counsellor to make application for a debt review in terms of the National Credit Act, 34 of 2005. ("the NCA").

It was submitted on behalf of the plaintiff that the defendants are precluded from relying on a debt review application in view of the provisions of Section 86(2) of the NCA.

Section 86(2) provides as follows:

> "An application in terms of this section may not be made in respect of, and does not apply to, a particular credit agreement if, at the time of that application, the credit provider under that credit agreement has proceeded to take the steps contemplated in section 129 to enforce that agreement."

I will return to this argument later.

It was further submitted on behalf of the plaintiff that the NCA does, in any event, not apply to the agreement in question by virtue of the fact that the first defendant is a juristic person and that the principal debt is an amount of R927 040.00. The plaintiff relied in this regard on the provisions of ss.4(1)(a) and (b) of the NCA, which provide as follows:

> "4. **Application of Act.** - Subject to sections 5 and 6, this Act applies to every credit agreement between parties dealing at arm's length and made within, or having an effect within, the Republic, except –
>
> (a) a credit agreement in terms of which the consumer is –

> (i) a juristic person whose asset value or annual turnover, together with the combined asset value or annual turnover of all related juristic persons, at the time the agreement is made, equals or exceeds the threshold value determined by the Minister in terms of section 7(1);
> (ii) the state; or
> (iii) an organ of state:
>
> (b) a large agreement, as described in section 9(4), in terms of which the consumer is a juristic person whose asset value or annual turnover is, at the time the agreement is made, below the threshold value determined by the Minister in terms of section 7(1)."

The threshold value determined by the Minister for section 4(1)(a) is R1 million. The higher threshold determined by the Minister for section 4(1)(b) is R250 000.00. There is no allegation or evidence in regard to the first defendant's asset value or turnover. Sections 4(1)(a) and (b) can therefore not be relied upon by the Plaintiff.

It must therefore be accepted that the NCA applies to the agreement in question. If that is so, I agree with the argument on behalf of the plaintiff that the defendants are precluded by the provisions of section 86(2) from relying on the second defendant's application for debt counselling. The second defendant first approached a debt counsellor on 12 October 2010, but the plaintiff had already proceeded to take steps in terms of Section 129 during May 2010. Section 86(2) therefore precludes the defendants from relying on the application for debt counselling.

In the result, the defendants have failed to disclose a bona fide defence. Summary judgment is therefore granted against the first and second defendants jointly and severally, in terms of prayers 2 and 5 of the application for summary judgment.

J W LOUW, J

NORTH GAUTENG HIGH COURT, PRETORIA

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