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

(1)	REPORTABLE: ~~YES~~/NO
(2)	OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3)	REVISED.

29/4/19 .... DATE

.... SIGNATURE

Case No: 82880/2017

In the matter between:

MERCEDES BENZ FINANCIAL SERVICES SA (PTY) LTD Plaintiff

and

ERIC LEIGH BRYER Defendant

JUDGMENT

D S FOURIE, J:

[1] This is an application for summary judgment which is opposed by the defendant. The plaintiff claims the return of a certain motor vehicle and requests an order in terms whereof the quantum portion of the plaintiff's claim be postponed *sine die*.

[2] It is alleged in the particulars of claim that on 31 March 2014 the plaintiff and the defendant entered into a written Agility Finance Agreement in terms whereof the plaintiff leased to the defendant a certain Mercedes Benz

C200 BE Avantgarde motor vehicle against payment of 35 (thirty five) monthly instalments the amount of R6 285.67 and a final residual payment of R296 367.76. The agreement provides that notwithstanding delivery of the vehicle, ownership thereof shall remain vested in the plaintiff, unless the defendant has chosen to settle the account by paying the full amount due at the time whereafter ownership will pass onto the defendant.

[3] According to the plaintiff the defendant has breached the agreement in that he has failed to make payments as provided for in the agreement as a result whereof the amount in arrears was R296 367.76 on 3 November 2017. It is also alleged that the agreement was cancelled as a result of the defendant's failure to pay the said amount.

[4] The defendant has admitted the written agreement upon which the plaintiff relies. According to him he is not indebted in the amount of R296 367.76 or any other amount. He has pleaded his defence as follows:

> *"I also refer to another schedule headed Mr Eric Leigh Bryer and my identity number and reconciliation of instalments owing. In this reconciliation, the principal debt is R413 374.80 and the contract start date is given as the 31st March 2014. It will be observed that in the second column, headed 'cash flow amount', the monthly instalment of R6 248.89 beginning 1 May 2014 together with a further debit of R36.78 has been paid every single month without fail. On the 1st April 2017 the last instalment of R6 644.28 was paid. There has never been a default on my part. It is therefore an incorrect assertion on the part of the plaintiff to allege that I have failed to pay amounts under the agreement."*

[5] He then also states that the amount of R296 367.76 is clearly a reference to a guaranteed residual under the option of an Agility Agreement. In the schedule of the agreement the amount of R296 367.76 appears opposite the words *"Final Instalment/Rental/Residual Payment/GFV"*. According to the defendant the acronym *"GFV"* stands for guaranteed future value and the amount of R296 367.76 is the guaranteed residual. He then concludes by saying:

> *"I have not chosen to finance the agreement or to purchase it in one lump sum payment and there is no provision made in the agreement for the plaintiff to claim the value of the GFV."*

[6] The problem with this explanation is that it totally ignores the *"finance details and cost of credit"* as they appear in the schedule of the agreement. The particulars thereof are as follows:

(a)	Cash price of vehicle	R329 000.00
(b)	Total additions	R 33 609.47
(c)	Total VAT	R 50 765.33
(d)	Total cash price	R413 374.80
(e)	Deposit	R 0.00
(f)	Principal debt	R413 374.80
(g)	Add finance charges	R108 137.08
(h)	Balance payable	R521 511.88

[7] Having regard to the balance payable of R521 511.88, the payment schedule indicates the following:

(a) First payment on 1/5/2014 - R6 285.67.

(b) Followed by 35 monthly instalments (from) 1/6/2014 - R6 285.67.

(c) Final instalment/Rental/Residual Payment/GFV on 1/4/2017 - R296 367.76.

[8] In addition to this, a monthly service fee of R50.00 plus VAT is also payable. A simple calculation of the service fee, plus the first instalment of R6 285.67 and 35 instalments of R6 285.67 will soon indicate that the aggregate is not even close to the *"balance payable"* in the amount of R521 511.88 as indicated in the *"Finance Details and Cost of Credit"*. It is therefore clear that the defendant has failed to pay the full amount of R521 511.88 as he was supposed to do in terms of the written agreement. His defence that the amount of R296 367.76 represents the guaranteed future value is therefore without any merit.

[9] Counsel for the defendant has also argued that the particulars of claim does not disclose a cause of action. I do not agree with this submission. The particulars of claim, read with the written agreement as an annexure, clearly sets out the plaintiff's cause of action. In the result I am of the view that the defendant has failed to disclose a *bona fide* defence and therefore summary judgment should be granted.

ORDER

Summary judgment is granted against the defendant as more fully set out in the draft order attached hereto marked "X".

D S FOURIE
JUDGE OF THE HIGH COURT
PRETORIA 29/4/19

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

24/4/19

CASE NO: 82880/2017

On this the 4th of April 2019, Before the Honourable Judge Fourie

In the matter between:

MERCEDES-BENZ FINANCIAL SERVICES (PTY) LTD Applicant

and

ERIC LEIGH BRYER Respondent

~~DRAFT~~ ORDER

Having heard argument on behalf of the legal representatives of the parties, the following order is granted against the Respondent in favour of the Applicant:

1. The respondent is ordered to return the Mercedes-Benz C200 BE Avantgarde A/T F/L (W204) motor vehicle with engine number 27186030700144 and chassis number WDD2040482R324404;

2. The *quantum* portion of the plaintiff's claim is postponed *sine die*;

3. Costs of suit on the scale as between attorney and client.

BY ORDER OF THE COURT