

REPUBLIC OF SOUTH AFRICA



**GAUTENG DIVISION, PRETORIA
(HIGH COURT OF SOUTH AFRICA)**

(1)	REPORTABLE: YES / NO	
(2)	OF INTEREST TO OTHER	GES: YES/NO
(3)	REVISED.	
<u>21/08/2015</u>		<u>[Signature]</u>

21/8/15
CASE NO: 25090/15

In the matter between:

NEDBANK LIMITED T/A MFC

APPLICANT

AND

ABIOS KHOELE

RESPONDENT

ID NUMBER: (.....)

JUDGMENT

MAKUME J

[1] This is an application for summary judgment in which the applicant seeks the following:

- (a) Confirmation of cancellation of the agreement;
- (b) Return of a 2006 BUELL XB9SX CITY X bearing engine number KX026200373 and chassis number 5MZKX02RX63200373;
- (c) Costs on a scale as between party and party.

[2] It is common cause that on or about 13th November 2013 and at Pretoria Applicant and the Respondent entered into a written Instalment sale agreement in terms of which the Applicant funded the Respondent to enable the Respondent to purchase the motorcycle mentioned in 1(b) above from a Harley Davidson Dealership in Pretoria.

[3] The Respondent took delivery of the motorcycle on the 15th November 2013 and returned it on the 18th November 2013 after it had exhibited some material defects.

[4] On the 4th December 2013 the Respondent addressed a letter to the Harley Davidson Dealership cancelling the agreement. He made no payment and has been without the motorcycle since the 18th December 2013.

[5] In resisting summary judgment the Respondent raises the following:

5.1 Firstly that he was sold a defective motorcycle by the Dealership that he returned it to them and cancelled the agreement.

5.2 Secondly he says that according to him he correctly cancelled the agreement when he informed Harley Davidson.

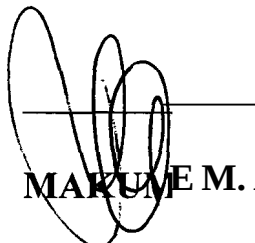
[6] I am satisfied that the Respondent has in his affidavit resisting summary judgment raised a bona fide defence in compliance with Rule 32 (3) (b).

[7] Accordingly I make the following order:

- (i) The Application summary judgment is refused.
- (ii) The Defendant is granted leave to defend.
- (iii) Costs of the application shall be costs in the action.

 21/8/2015

Dated at Pretoria on the 21st day of August 2015.

 
MARUM E M. A.
(JUDGE OF THE HIGH COURT)

Date of hearing: 7 August 2015

Date of Judgments: 21 August 2015

Counsel for Plaintiff:

Adv K A WILSON

Instructed by:

S ROUX INCOPORATED

Office Block No 2

Monument Park

Pretoria

Tel: 012 460 0666

Ref: MrF ERASMUS/HE0189/15

Counsel for Defendants:

Adv

Instituted by:

HENK KLOPPERS ATTORNEYS

202 De Langenhoven Street

Constantia Park

Pretoria

Tel: (012) 993 4534

Ref: HJ KLOPPERS K4/15