IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Case No: 2562/2013

In the matter between:

ABSA BANK LTD Applicant

and

TSHELISO BERNARD JAKOBO Respondent

JUDGMENT BY:	SESELE, AJ
HEARD ON:	31 OCTOBER 2013
DELIVERED ON:	28 NOVEMBER 2013

[1] This is an application for summary judgment for cancellation of the instalment sale agreement, return of the motor vehicle, 2008 Dodge Caliber 2.0 CVT SXT A/T, with engine number 8[…], and chassis number 1[…].

[2] The instalment sale agreement between the parties was entered into on 11 July 2011.

[3] The plaintiff alleges in the summons that the defendant is in breach of the agreement in that the defendant failed to pay the monthly instalment and that the arrear amount as at 3 June 2013 was R8 774,08.

[4] The plaintiff launched this application in terms of Rule 32 after delivery of the notice of intention to defend the action is supported by the affidavit of Renier Jansen Van Rensburg.

[5] The defendant opposes the application on the following grounds:

5.1 The plaintiff's non-compliance with section 129 of the National Credit Act 34 of 2005;

5.2 That the defendant has a *bona fide* defence in that the defendant paid R11 000,00 in two instalments of R5 500,00 each on 1 June 2013 and 27 June 2013 respectively.

[6] The plaintiff attaches "track and trace print-out to the summons which confirmed that the notice in terms of section 129 was posted by registered mail at the Bloemfontein post office on 5 June 2013 and was delivered to the respondent on 7 June 2013. The tracking number on the registered mail corresponds to the tracking number on the track and trace "print-out".

[7] It therefore follows that there is no merit in the defendant's contention that the plaintiff failed to comply with the requirements of section 129 – **Sebola and Another v Standard Bank of South Africa Ltd and Another** 2012 (5) SA 142 (CC) at paras [75] – [77].

[8] The plaintiff alleges in the affidavit in support of this application that the defendant was in arrears with payment of R2 961,13 as at 16 August 2013. Furthermore, the plaintiff alleges that defendant paid instalments in February 2013, March 2013, April 2013, May 2013 and June 2013. The defendant did not pay in January 2013 and paid R360,00 only for July 2013 whereas the monthly instalment is R5 219,02. The arrears as per the instalment agreement statement issued on 10 August 2013 is R2 961,13. A copy of statement is attached to the opposing affidavit marked annexure "A".

[9] It is therefore patently clear, by his own admission in the form of annexure "A", that the defendant is indeed in arrears with R2 961,13. The plaintiff is therefore entitled to the remedy in terms of rule 32 – **Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture** 2009 (5) SA 1 (SCA) at page 11 paras [21] – [32].

[10] The defendant does not disclose a *bona fide* defence which is good in law – **Maharaj v Barclays National Bank Ltd** 1976 (1) SA 418 (A) at 426A – D,

[11] The payment the defendant made in June 2013 will not constitute a defence even if the matter proceeds to trial because the defendant was in arrears on 16 August 2013. There is further no further allegation that the instalments in terms of the agreement are in fact up to date – **Breytenbach v Fiat SA (Edms) Bpk** 1976 (2) SA 226 (T) at 227G-H.

ORDER

[12] I accordingly grant summary judgment and make the following order:

12.1 That the agreement between the parties is cancelled.

12.2 That the defendant is ordered to return forthwith to the plaintiff, certain 2008 Dodge, model Caliber 2.0 CVT SXT A/T, with engine number 8[…] and chassis number 1[…], failing which the sheriff is directed to authorise to attach the vehicle whenever it may be found and hand same to the plaintiff.

12.3 That the plaintiff is granted leave, on the same papers properly supplemented, to prove its damages, if any.

12.4 Costs on party and party scale.

L. M. S. SESELE, AJ

On behalf of the applicant: Adv. J. Els
Instructed by:
EG Cooper Majiedt Inc.
BLOEMFONTEIN

On behalf of the respondent: Mr. M. J. Ponoane
Instructed by:
P.J. Ponoane Attorneys

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