

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: **2023-009594**

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
_____	_____
DATE	SIGNATURE

In the matter between:

SOUTH AFRICAN SECREDITISATION PROGRAMME (RF) (PTY) LTD Plaintiff

and

HAKEM GROUP (PTY) LTD First defendant

SEBOTHOMA, MONAMUDI GABRIEL Second defendant

JUDGMENT

HA VAN DER MERWE, AJ:

[1] On 5 March 2025, in an application for summary judgement brought by the plaintiff, after I heard argument on behalf of the parties, I made the following order:

[1.1] The defendants are granted leave to defend the action;

[1.2] Costs are in the cause.

- [2] What follows are the reasons for my order.
- [3] The plaintiff's claim is based on a lease agreement concluded between Sunlyn (Pty) Ltd and the first defendant. (The plaintiff became a party to the lease agreement in place of Sunlyn (Pty) Ltd in terms of agreements that are not relevant to the issues before me). In terms of the lease agreement, in the event that the first defendant defaults on its obligation to pay the rent, the lessor is entitled to: (a) cancel the lease agreement; (b) obtain possession of the truck leased to the first defendant under the lease agreement; (c) collect payment of the arrear rent and other outstanding amounts; and (d) as liquidated damages, claim payment of all other amounts that would have fallen due from the date of cancellation to the normal expiry date of the lease agreement, plus the present value or book value of the truck at the date of cancellation, less the monetary value of the truck at the time of its recovery when it is restored to the possession of the lessor.
- [4] The second defendant is liable as co-principal debtor with the first defendant for the latter's debts to the plaintiff, in terms of a guarantee concluded between the second defendant and Sunlyn (Pty) Ltd. (The plaintiff replaced Sunlyn (Pty) Ltd as a party to the guarantee, also in terms of agreements that are not relevant to the application for summary judgment).
- [5] In their plea and in the affidavit resisting summary judgment, the defendants rely on section 48 of the Consumer Protection Act 68 of 2008 (**the CPA**), contending that the terms of the lease agreement that allow the plaintiff, upon cancellation, to both obtain possession of the truck and claim payment of amounts that would otherwise only become payable in the future, are unfair, unreasonable, or unjust as contemplated by section 48 of the CPA.
- [6] As the plaintiff does not rely on the exclusion in section 5(2)(b) of the CPA (as one might have expected), or any other exclusion, I must take it for granted that the CPA applies.
- [7] It seems to me that the defendants have a bona fide defence in contending that section 48 of the CPA applies to the terms of the lease agreement referred to above. Whether those terms indeed do fall foul of section 48 on a full evaluation

of all the facts is another matter, but it does not seem appropriate to me that that enquiry should be undertaken in summary judgment proceedings.

[8] For these reasons I made the order referred to above.

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H A VAN DER MERWE
ACTING JUDGE OF THE HIGH COURT

Heard on: 5 March 2025

Delivered on: 6 March 2025

For the plaintiff: Adv J G Botha instructed by Oosthuizen Du Toit Berg and Boon Attorneys

For the first and second defendants: Mr CW Haveman, CWH Attorneys

