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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case No: 2023/070442

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

DATE **16 May 2025**

SIGNATURE

In the matter between:

POTPALE INVESTMENTS (PTY) LTD

Applicant/Plaintiff

and

KOTELO RABOTSHEGWANE PETRUS

Respondent/Defendant

JUDGMENT

BARNES AJ

[1] On 12 February 2025, I granted an order in the following terms:

“Summary judgment is granted against the Defendant as follows:

1. Confirmation of termination of the agreement;

*2. Return of the **2019 TOYOTA QUANTUM 2.5 D-4D SESFIKILE 16S***

with engine number 2[...] and chassis number A[...] to the Plaintiff forthwith;

3. Attorney and client costs to be taxed.”

- [2] I indicated that I would give reasons for my order in due course. These are my reasons.

- [3] The Plaintiff's claim arose out of an agreement (**“the Agreement”**) entered into between the Plaintiff and the Defendant on 27 September 2022 in terms of which the Plaintiff leased the motor vehicle described above (**“the motor vehicle”**) to the Defendant.

- [4] The motor vehicle was leased by the Defendant for the purposes of conducting a taxi business and it was accepted by the parties the Agreement was a credit agreement in terms of the provisions of the National Credit Act 34 of 2005 (**“the NCA”**).

- [5] In terms of the Agreement, ownership of the motor vehicle remained with the Plaintiff until such time as the Defendant had paid all the amounts due in terms thereof.

- [6] The Defendant was obliged, in terms of the Agreement, *inter alia*, to pay a monthly instalment of R14 916.04. If he failed to do so, the Agreement entitled the Plaintiff to terminate the Agreement, repossess the motor vehicle and recover the legal costs of doing so on the scale as between attorney and client.

- [7] The Defendant fell into arrears. Following the requisite demand in terms of the provisions of sections 129 and 130 of the NCA, the Plaintiff instituted action against the Defendant. The Plaintiff sued for confirmation of the termination of the Agreement, the return of the vehicle, and costs on the scale as between attorney and client.

[8] Following receipt of the Defendant's plea, the Plaintiff launched an application for summary judgment. The Defendant filed an affidavit opposing summary judgment but failed to file heads of argument or a practice note.

[9] There was, without explanation, no appearance for the Defendant at the hearing of the summary judgment application.

[10] In his papers, the Defendant admits that has failed to make the repayments in terms of the Agreement. He does so in the following terms:

"I admit that I am in arrears with the repayment. The reason is that I cannot afford the monthly payments as my monthly income is not enough to pay the instalments on a regular basis."

[11] The defences raised by the Defendant are twofold:

11.1 First, he contends that: *"I signed the contract but did not read it. I only achieved Standard 3 at school and cannot read English. The contents of the contract were also not explained to me."*

[12] Second, he contends that: *"The Defendant is not aware of any assessment done by the Plaintiff in terms of s 81(2) of the NCA. The Defendant did not give any documentation or financial information to the Plaintiff to do the necessary assessment. If any assessment were (sic) made, it was done on forged documentation."* On the basis of this, the Defendant avers that the Agreement constituted "reckless credit" in terms of the provisions of the NCA and therefore falls to be suspended or set aside.

[13] Neither of the Defendant's contentions are convincing.

[14] In relation to the first, the Defendant admits that his intention was *"to buy a vehicle for commercial purposes."* He also admits that *"they told me that I will pay R15 000.00 per month."* This is in contradiction to his averment that the contents of the Agreement were not explained to him.

- [15] It is therefore clear, on the Defendant's own version, and despite his protestations to the contrary, that he was aware that he was signing an agreement to purchase a motor vehicle for commercial purposes (in his case for use as a taxi) and that in terms of the Agreement he was required to pay a monthly instalment of R15 000.00 (the actual amount in terms of the Agreement was R14 916.04).
- [16] The Defendant's second contention is pleaded in similarly vague and contradictory terms. In particular, the Defendant admits in his affidavit opposing summary judgment that he *"arrived at the dealership with a recommendation letter, his ID and three months bank statements."* This is in stark contradiction to the averment in his plea that *"he did not give any documentation or financial information to the Plaintiff"* (the basis of his "reckless credit" claim).
- [17] It is salutary, at this juncture, to highlight the standard which must be met by a defendant in order to defeat a claim for summary judgment. In *Breitenbach v Fiat SA (Edms) Bpk* 1972 (2) SA 226 (T), Colman J delivering the judgment of the Full Court, held as follows:

"It must be accepted that the subrule was not intended to demand the impossible. It cannot therefore be given its literal meaning when it requires the defendant to satisfy the Court of the bona fides of his defence. It will suffice, it seems to me, if the defendant swears to a defence, valid in law, which is not inherently and seriously unconvincing."

Another provision of the subrule which causes difficulty is the requirement that in the defendant's affidavit, the nature and grounds of his defence and the material facts relied upon therefor, are to be disclosed 'fully'.....

.....the word fully should not be given its literal meaning in Rule 32(3)

and no more is called for than this: that the statement of material facts be sufficiently full to persuade the Court that what the defendant had alleged, if proved at trial, will constitute a defence to the plaintiff's claim. What I would add however, is that if the defendant's defence is averred in a manner which appears in all the circumstances to be needlessly bald, vague or sketchy, that will constitute material for this Court to consider in relation to the requirement of bona fides."¹(Emphasis added)

- [18] In *South African Taxi Securitisation v Mbatha* 2011 (1) SA 310 (GSJ) ("*Mbatha*") this Court dealt with a similar application for summary judgment for the repossession of a motor vehicle following breach of a credit agreement by the consumer. There, as here, the Defendant raised the defence of "reckless credit" in terms of the NCA in an attempt to defeat the claim for summary judgment. The Court held as follows:

*"The principles enunciated in Breitenbach v Fiat are no less applicable when the Defendant deposing to an affidavit resisting summary judgment is relying upon defences based on sections of the NCA. Since the enactment of the NCA there seems to be a tendency in these courts for defendants to make bland allegations that they are 'over indebted' or that there has been 'reckless credit'. These allegations, like any other allegations made in a defendant's affidavit opposing summary judgment should not be 'inherently and seriously unconvincing', should contain a reasonable amount of verificatory detail, and should not be needlessly bald, vague or sketchy. A bald allegation that there was 'reckless credit' or that there is 'over-indebtedness' will not suffice."*² (Emphasis added)

- [19] In my view, this is a case in which the vague and contradictory allegations made by the Defendant are ultimately "*inherently and seriously unconvincing*" and therefore fall significantly short of the level of cogency and plausibility

¹ At 228.

² At para 26.

required in our law to defeat a claim for summary judgment.

- [20] Even however if I am wrong in this regard, the Defendant's contentions, assuming they were found to be credible, would not constitute a cognisable defence to the Plaintiff's claim for repossession of the motor vehicle. This is so because, even if the Agreement were to be suspended or set aside on the bases contended for by the Defendant, the Plaintiff, who remains the owner of the motor vehicle, would still be entitled to the repossession thereof. This Court came to the same conclusion in *Mbatha*:

"It seems unlikely that the legislature ever intended that the consumer could keep 'the money and the box.' If the consumer obtained possession and use of a motor vehicle in circumstances in which no credit should have been extended to the consumer, it would be fundamentally unfair and counterproductive for the consumer to continue to use the vehicle while at the same time not making payments under the agreement.

*If the consumer had a valid complaint that, but for the recklessness of the credit provider, the consumer would never have become involved in the transaction, it might be just and reasonable to set aside the agreement. In that event the agreement would be null and void, as if it had never been. As a consequence the credit provider, who remains the owner of the vehicle, would be entitled to restoration of the vehicle.*³

(Emphasis added)

- [21] The same logic would apply if the Agreement was suspended in terms of the NCA. Thus in *Mbatha* this Court held that:

"If on the other hand, the effect of the Agreement is merely suspended, all elements of the Agreement would have to be suspended. This would mean that the consumer would not be entitled to continue to

³ At paras 46 and 47.

*retain possession of the vehicle during the period of suspension. At the same time, the consumer would not have to make any payments during the suspension period.*⁴

[22] In either event then, the Defendant has raised no cognisable defence to the Plaintiff's claim for repossession of the motor vehicle.

[23] It was for these reasons that I granted the Plaintiff's application for summary judgment.

**BARNES AJ
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG**

Heard: 12 February 2025

Reasons: 16 May 2025

Appearances:

Applicant:

Adv R Stevenson, instructed by Marie-Lou Bester Inc

⁴ At para 48.

Respondent:

No appearance