REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE Number: 120260/2023

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

15/5/2025

In the matters between:-

**WESBANK, A DIVISION OF FIRSTRAND BANK LIMITED** Applicant

and

**BOHLALE MOTHIPA GROUP (PTY) LTD** First Respondent

**MOTHIPA MANTSHO MOJAPELO** Second Respondent

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**JUDGMENT**

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**<u>JACOBS AJ:</u>**

[1] This is an application for summary judgment. The plaintiff instituted action against the first defendant for the return of 2020 Mercedes Benz X350D 4 Matic Power motor vehicle and ancillary relief following the alleged default on the part of the first defendant to make payment of instalments payable to the plaintiff under an electronic instalment agreement. Summary judgment is sought for the return of the vehicle bought by the first respondent and for the postponement of the balance of

the relief sought after taking into account the proceeds from the sale of the vehicle in execution by the plaintiff.

[2] The respondent challenges the plaintiff's right to claim judgment on the following grounds:

2.1. That the National Credit Act is applicable and that the plaintiff has failed to comply with the said enactment including the issue of a notice in terms of section 129 of the National Credit Act;

2.2. That the plaintiff failed to attach to the summons a certificate showing that it is registered as a credit provider;

2.3. The entitlement of the plaintiff to cancel the contract; and

2.4. The valid cancellation of the contract justifying return of the vehicle as claimed by the plaintiff.

[3] In addition to the abovementioned defences, the defendants on or about 8 May 2025 delivered a notice of amendment in terms of "section 28" (sic) to the effect that during or about December 2020 the second defendant entered into a customary marriage which is in community of property and that, as a result of the customary union which is in community of property, the party thereto Nthabiseng Moretsele, who did not sign the suretyship in terms of which the second defendant is being held liable while she has a direct and substantial interest in the matter, should have been joined as a defendant in the proceedings afoot here. The defence the notice of amendment seek to introduce is, therefore, dilatory.

[4] The defendants (or any of them) do not show with the required measure of particularity that the National Credit Act applies to the transaction. I agree with counsel for the plaintiff that the defendants have not challenged in its plea or its answering affidavit the allegations contained in paragraph 11 of the particulars of claim to the effect that the provisions of Act 34 of 2005 are not applicable to the agreement on which the claim is based. Firm allegations in this context are contained in the particulars of claim alleging that the first defendant as juristic person has a turnover in excess of the statutory amount and that the agreement on which the claim is based is, therefore, a "large agreement" as contemplated by the provisions of Act 34 of 2005. The challenge of the respondents in this regard is

nothing more than a bold and sketchy denial of the allegations. The findings in *Assetline South Africa (Pty) Ltd v Colani Investment Holdings (Pty) Ltd* 2021 JDR 0893 (KZD) at [17] are firmly apposite here in my view to conclude that there was no need for the plaintiff to attach a valid certificate of registration as a credit provider when the loan was advanced. The inapplicability of the National Credit Act renders this defence baseless.

[5] The defendants challenge the plaintiff's right to cancel the agreement. In the absence of proof of payment (compliance by them with the terms and conditions of the agreement) the plaintiff's entitlement to claim payment and demand return of the vehicle follow ex lege. The defendants' challenge of the plaintiff's right to have cancelled the agreement concerned is without any substance and does not constitute a triable issue within the meaning of the term in rule 32.

[6] The defendants notice of intention to amend to raise the dilatory defence mentioned above took place at a late stage. At the time of their plea (20 August 2024) the content of the notice of amendment was within their knowledge. It might be in certain instances necessary to postpone an application for summary judgment to afford a party in the position of the defendants the opportunity to amend their pleadings. But this is not such an instance. No explanation is offered for the lateness of the dilatory conduct of the defendants in delivering their notice of intention to amend.

[7] I agree with counsel for the plaintiff that section 17(5) of the Matrimonial Property Act 88 of 1984 which provides that were a debt is recoverable from a joint estate, the spouse who incurred the debt or both spouses jointly may be sued therefore and where a debt has been incurred for necessaties for the joint household, the spouses may be sued jointly and severally. A dilatory defence of joinder within the context which the defendants' raise it in these proceedings has been rejected repeatedly by our courts and it suffices to refer to *Strydom v Engen Petroleum Ltd* 2013 (2) SA 1987 (SCA) at [23] – [25] as guiding authority on the point. In my view the dilatory defence raised in the notice of amendment does not constitute a triable issue within the context of rule 32.

[8] In my view the defendants have not shown sufficient facts to deny the plaintiff summary judgment for delivery of the vehicle concerned and I grant summary judgment as follows:

1. Return and delivery to the plaintiff of the 2020 Mercedes-Benz X350D 4Matic Power with chassis number: W[...] and engine number: 6[...] and authorising the plaintiff to sell the said vehicle and credit the proceeds of such sale towards the reduction of the debt owed by the first and second defendants;
2. That the claim for damages and interest components of the plaintiff's claim be postponed indefinitely; and
3. That the first and second defendants pay the plaintiffs costs for the summary judgment application on the scale as between attorney and client.

**H F JACOBS**
**ACTING JUDGE OF THE HIGH COURT**
**GAUTENG DIVISION, PRETORIA**

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| Heard on: | 12 May 2025 |
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| Date of Judgment: | 15 May 2025 |