Reportable:	YES/**NO**
Circulate to Judges:	YES/**NO**
Circulate to Magistrates:	YES/**NO**
Circulate to Regional Magistrates	YES/**NO**

IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

CASE NO: CIV APP MG33/2023

In the matter between: -

M. T. MOTSWANE Appellant

and

BMW FINANCIAL SERVICES Respondent

Coram: Reid J *et* Mfenyana J

Delivered: This judgment was handed down electronically by circulation to the parties' representatives *via* email. The date for hand-down is deemed to be **06 January 2025.**

ORDER

The appeal is dismissed with costs.

JUDGMENT

Mfenyana J

Introduction

[1] This is an appeal against the whole judgment and order of the Magistrates' Court in Vryburg, handed down on 12 July 2023.

[2] In the notice of appeal delivered on 14 September 2023, the appellant contends that the court *a quo* erred in finding that the appellant does not have a *bona fide* defence, and in finding that the agreement is invalid.

[3] In the amended notice of appeal dated 11 October 2023 the appellant concedes that the court *a quo* correctly concluded that the agreement between the appellant and the respondent was invalid. However, the appellant avers that the court *a quo* should have concluded that in the absence of a valid agreement, no case had been made out for summary judgment as there was no underlying *causa*.

[4] In the heads of argument filed on behalf of the appellant, it is submitted that the court *a quo* did not make a finding that the agreement is invalid and as such, this ground of appeal was not proceeded with by the appellant. Thus, the sole ground of appeal is that the court *a quo* erred in rejecting the appellant's defence that he did not read the agreement before signing it.

[5] The facts of the matter relevant to this appeal are that the respondent (as plaintiff) in the court *a quo*, issued a summons against the appellant (defendant) for cancellation of an instalment sale agreement concluded between them, and for an order authorising the sheriff to attach and seize the motor vehicle forming the subject-matter of the agreement, and hand it over to the respondent. After the appellant filed his plea, the respondent brought an application for summary judgment, alleging that the appellant had no *bona fide* defence, and had filed the plea solely for purposes of delay. The court *a quo* agreed with the respondent and granted summary judgment against the appellant.

[6] In granting the application, the court *a quo* considered whether the defence raised by the appellant was *bona fide*. The court noted that the appellant had been in possession of the motor vehicle since 2008 or 2009 and even went to the extent of putting himself under debt review. Thus, the court rejected the appellant's contention that he considered the agreement to be invalid. It further considered that despite stating that he had paid diligently towards the agreement, the appellant did not challenge the payment breakdown provided by the respondent in response to the appellant's notice in terms of Rule 23(15) of the Magistrates' Court Rules. The court further dismissed the appellant's defence that he did not read the agreement as bad in law, as he ought to have known the terms and conditions of the agreement he was putting his signature on. He also initialled and signed the affidavit resisting summary judgment. Ultimately the court found that all the

defences raised by the appellant were not *bona fide*.

[7] In the heads of argument, the appellant concedes that a person who affixes their signature to an agreement cannot under normal circumstances claim that they did not read the agreement as the principle of *caveat subscriptor* is a trite principle in our law. However, in this instance, further contends the appellant, the defence he raised was that he was not able to read the terms and conditions of the agreement, as the respondent informed him that he should simply sign the agreement, and he would "drive a fancy car".

[8] It is thus the appellant's contention that the respondent took advantage of the appellant and cannot be allowed to rely on the agreement as there was no meeting of minds. According to the appellant, he signed the affidavit resisting summary judgment as this was explained to him as he was legally represented. In my view, this has nothing to do with whether or not the appellant read the agreement before signing it as this was his defence in the court *a quo*. This is also the basis on which the court *a quo* dismissed the defence.

[9] In opposing the appeal, the respondent argues that there is no ground of appeal relied on by the appellant, having abandoned his initial complaint that the agreement is invalid. For this reason the respondent avers that the appeal should be dismissed with punitive costs. In this regard, it is worth pointing out that the appellant did not abandon his defence that the agreement is invalid, as raised in the court *a quo*. What he no longer relies on is the averment that the court *a quo* found

that the agreement is invalid. It is common cause that the court *a quo* did not make such finding.

[10] The respondent further contends that the defence raised by the appellant is simply that he did not read the agreement, which is not sustainable as he is bound by the terms of the agreement on the basis of the principle of *caveat subscriptor* which is based on quasi mutual assent. Thus, the conclusion is that the appellant assented to the terms of the agreement. This is also confirmed by the appellant's conduct in making payments in respect of the agreement.

[11] It is trite that in terms of the principle of *caveat subscriptor* the responsibility to understand the agreement before signing is on the person signing the agreement. The appellant has conceded this. He however contends that he did not read the agreement because the respondent instructed him not to read the agreement. On the other hand he states that he is illiterate. The fact that the respondent, as contended by the appellant informed the appellant not to read the agreement does not take the matter much further. It is not the appellant's case that he was forced to sign the agreement. According to him he was merely told that he would drive a fancy car. That cannot amount to inducement. He does not say that he did not want to sign the agreement, or what terms of the agreement would have caused him not to sign the agreement, had he read it.

[12] In *Langeveld v Union Finance Holdings (Pty) Ltd*[1] the court had the following to say about the principle of *caveat subscriptor*:

> "There is a strong *praesumptio hominis* (popular presumption or presumption common among persons) that anyone who has signed a document had the animus (intention) to enter into the transaction contained in it, and she is burdened with the onus of convincing the Court that she in fact had not entered into the transaction by virtue of the maxim *caveat subscriptor* (a person who signs must be careful). As A J Kerr says: 'It is a sound principle of law that a man, when he signs a contract, is taken to be bound by the ordinary meaning and effect of the words which appear over his signature."

[13] By putting his signature on the agreement, the appellant purported to have understood the terms of the agreement. Further by paying for the motor vehicle in terms of the agreement, he understood the monthly repayment terms of the agreement. He could not comply with something he did not understand.

[14] In the circumstances, there is no merit to the averments by the appellant. The court a quo correctly rejected the defence raised by the appellant. The appeal falls to be dismissed.

Order

[15] In the result the following order is made:

The appeal is dismissed with costs.

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1 2007 (4) SA 572 (W).

S MFENYANA
JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

I agree.

FMM REID
JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

APPEARANCES

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Date reserved	:	22 March 2024
Date of judgment	:	06 January 2025