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

CASE NO: 2024-072963

(1) REPORTABLE:

(2) OF INTEREST TO OTHER JUDGES:

(3) REVISED:

DATE 21/11/2025

SIGNATURE

In the matter between:

**CATERPILLAR FINANCIAL SERVICES
SOUTH AFRICA (PTY) LTD**

Applicant/Plaintiff

and

VISION FLEET SOLUTIONS (PTY) LTD

Respondent/Defendant

JUDGMENT

**THIS JUDGMENT IS HANDED DOWN REMOTELY AND WILL BE
CIRCULATED TO THE PARTIES ELECTRONICALLY.**

WELGEMOED, AJ

- [1] This is an application for summary judgment brought under Rule 32 that was heard on 24 November 2025, on the opposed motion roll, where I reserved judgment after argument by both parties..

[2] The Plaintiff seeks an order confirming cancellation of the agreement concluded between the Plaintiff and the Defendant, return of the Units to which the Agreement applies, and costs.

[3] The salient background of the matter is not seriously disputed. In summary the parties entered into a master instalment sale agreement in terms of which the Plaintiff sells to the Defendant two units as describe in the schedule(s). The two units are describe as follows:

a) A new Caterpillar Medium Excavator 323 bearing serial number/VIN Y[...] (The agreed purchase price is an amount of R2 725 000,00. The amount financed is an amount of R2 588 750,00 together with interest at a variable interest rate of prime plus 4.5027% per annum);

b) A new Caterpillar Backhoe Loader 426 bearing serial number/VIN E[...] (The agreed purchase price is an amount of R1 481 000,00 together with interest at a variable interest rate of prime plus 3.7503% per annum).

[4] The Defendant agrees that its payment and performance obligations under the master instalment sale agreement are absolute and unconditional, and are not subject to cancellation, reduction or set-off for any reason. The master instalment sale agreement constitutes the sole record of the agreement between the parties in regard to the subject matter thereof. No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded in the master instalment sale agreement. If at any time, any provision of the master instalment sale agreement is or becomes illegal, invalid, unenforceable or inoperable in any respect, neither the legality, validity, enforceability or operation of the remaining provisions, nor the legal validity, enforceability or operation of the remaining provisions, will in any way be affected or impaired.

[5] The Defendant defaulted in terms of its repayment obligations under the master instalment sale agreement read with the schedules and the indicative payment schedules, in that the Defendant failed to make payment to the Plaintiff of the monthly instalments due and payable on due date. A written demand was delivered to the Defendant demanding payment of the amounts due and owing on 19 April 2024.

[6] The Defendant failed to make payment to the Plaintiff of the amount claimed in terms of the Plaintiff's written demand, within the period afforded. In the premises the Plaintiff became entitled to cancel the agreement between the parties in terms of the master instalment sale agreement read with the schedules and to take control and possession of the aforesaid Units. The written notice of cancellation was delivered to the Defendant on 28 May 2024.

[8] In the premise the Plaintiff contends that the the Defendant is in unlawful possession of the aforesaid Units, and the Plaintiff, as the legal owner of the Units, has become entitled to take control and possession of the aforesaid Units, and to claim immediate delivery of the Units by and from the Defendant.

[9] In opposition, the Defendant raises the following main defences, which I will deal with hereunder:

- a) The provisions of the National Credit Act, 34 of 2005 ('the Act') apply to the Agreement and the Plaintiff failed to comply with the relevant provisions of the Act. This defence was not persisted with at argument;
- b) Determination of prayers 2 and 3 for delivery of the Units is dependent upon a determination by the Court that the Defendant breached the

Agreement. The Defendant denies its indebtedness to the Plaintiff and therefore a dispute of fact is said to exist. The Defendant contends that the alleged dispute of fact affects the Plaintiff's right to cancel the Agreement. The Defendant failed to provide any evidence of payment of the amount owing and accordingly this defence holds no water. On the evidence before this Court, the Defendant breached the agreement, thereby triggering the Plaintiff's right to cancellation.

- c) The Defendant relies on an alleged novation of the agreement, arguing that the novated agreement could not have been cancelled by the Plaintiff. There are no specific reference made to any terms of the purported novation or even an attempt made to show compliance with such a novated agreement. In any event, clause 15 of the master instalment sale agreement negates any reliance on a purported oral novation of the agreement. The Agreement constitutes the sole record of the agreement between the parties, and no party shall be bound by any express or implied term, representation, warranty, promise or the like that is not recorded in the Agreement.
- d) That the Defendant was not given an opportunity to read the agreement and signed same based on what the Plaintiff represented to it. The Defendant's conduct over a period of time again shows there is simply no merit in this contention. It is common cause that the parties entered into the agreement and that, at all relevant times during the course of conclusion of the agreement, the Defendant was duly represented by Marius Victor Knoetze, the deponent to the affidavit resisting summary judgment. By appending his signature to each page of the master instalment sale agreement and to each page of the two schedules, Mr Knoetze as Defendant's duly appointed agent, bound the Defendant to the terms and conditions of the agreement. This is the case whether Mr Knoetze read and understood the terms and conditions thereof or not. This principle is known as

caveat subscriptor. Over a period of approximately five months, the Defendant concluded two schedules and a master instalment sale agreement with the Plaintiff. The terms and conditions of the schedules being identical. The Defendant signed the first of the two schedules on 29 September 2022 and, in terms thereof, took delivery of the Unit on 13 October 2022. The objective facts show that the Defendant willingly and freely signed not only the schedules, but the master instalment sale agreement. The master instalment sale agreement specifically incorporates the provisions of the schedules.

- [10] Meritless denials and allegations are merely intended to delay the matters and is ultimately infringing on the Plaintiff's right to summary judgment as stated by the Supreme Court of Appeal in ***NPGS Protection & Security Services CC. v Firststrand Bank Ltd***¹;

"[14] Indeed, the court would be remiss in its duties of such defences, clearly devoid of any bona fides, stand in the way of plaintiffs who are entitled to relief. The ever-increasing perception that bald averments and sketchy propositions are sufficient to stave off summary judgment is misplaced and not supported by the trite principles developed over many decades by our courts. See for example, the well-known judgment of this court in Maharaj v Barclays National Bank Ltd. 1976 (1) SA 418 (A) where the proper approach to applications for summary judgment is stated."

- [11] It is settled law that the Defendant must not be vague, sketchy and laconic in his opposing affidavit. Such attributes entitle the court to form the impression that the defendant cannot or will not play open cards.² Of crucial importance in summary judgment proceedings is the comprehensive disclosure of the material facts upon which the defence is

¹ 2020 (1) SA 494 SCA.

² *Appliance Hire (Natal) (Pty) Ltd v Natal Fruit Juices (Pty) Ltd* 1974 (2) SA 287 (D) 290H–291B; *Breitenbach v Fiat SA (Edms) Bpk* 1976 (2) SA 226 (T) 229A; *Diesel Power Plant Hire CC v Master Diggers (Pty) Ltd* 1992 (2) SA 295 (W) 298C–F; *Creative Car Sound and Another v Automobile Radio Dealers Association* 1989(Pty) Ltd 2007 (4) SA 546 (D&C) 556I–557A.

based. This is particularly so as the evaluation of the defendant's opposing affidavit frequently entails not a consideration of what the defendant has said, but of what he did not say.³

[12] The plea read with the affidavit resisting summary judgment is nothing more than a bare denial and does not satisfy the requirements of Rule 32(3). The nature and grounds of the defence and the material facts relied upon is not contained in the Plea. The opposition to the application is ill conceived and the Defendant has not shown one factual ground upon which this Honourable Court can come to the Defendant's assistance.

Order

[13] Consequently, I make the attached draft order an order of court which I mark "X".

**WELGEMOED CJ
ACTING JUDGE OF THE HIGH COURT
OF SOUTH AFRICA GAUTENG
DIVISION, PRETORIA**

Date of Hearing: 24.11.2025

Date of Judgment: 26.11.2025

Counsel for Plaintiff: Z Marx du Plessis

Counsel for Defendant: XT van Niekerk

³ *Kassim Brothers (Pvt) Ltd v Kassim* 1964 (1) SA 651 (SR) 653B.