



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

CASE NO: 2315/2024

Not Reportable

In the matter between:

BMW FINANCIAL SERVICES

PLAINTIFF

and

DONOVAN JOHANN JANSE VAN VUUREN

DEFENDANT

Coram: Reddy J

Heard: 14 November 2025

Delivered: Judgment was handed down electronically by circulation to the parties' legal representatives by email and released to SAFLII. The date and time for handing down of the judgment are deemed to be 10h00 on 20 January 2026.

Summary: Summary judgment in terms of Rule 32 of the Uniform Rules of Court- whether the plaintiff's claim had prescribed in terms of s11(d) of the Prescriptive Act 68 of 69 - proper application of s 127(2 and (5) of the National Credit Act 34 of 2005.

ORDER

1. The plaintiff is ordered to pay the defendant the sum of R158 073.51.
2. Interest on the sum of R158 073.51 at the prescribed rate of interest as from 16 February 2024 to date of final payment.
3. Costs of the suit.

JUDGMENT

Reddy J

Introduction

- [1] Before this court is an opposed application for summary judgment as evinced in Rule 32.¹ The plaintiff, BMW Financial Services South Africa, (Pty) Ltd, (BMW), seeks to recover a shortfall following the voluntary surrender and sale of a motor vehicle.

Background

- [2] For purposes of context, the following salient facts bears repetition. On 20 December 2018, at Klerksdorp, BMW, duly represented and the defendant Mr Donovan Johann Janse van Vuuren (van Vuuren) acting personally entered a written Instalment Sale Agreement, (the agreement).

¹ The Uniform Rules of Court.

- [3] Essentially the agreement was that van Vuuren was to purchase a 2012 BMW K 1600 GTL from BMW for R 247 521 52. For purposes of the present application, it is superfluous to restate the terms of the agreement. Ultimately, van Vuuren took delivery of the motor vehicle. On 24 February 2021, van Vuuren elected to voluntarily surrender the motor vehicle as demonstrated in s 127(1)(a) and (b) of the National Credit Act,² (the Act).
- [4] Following the surrender, the vehicle was valued by TUV SUD South Africa on 12 March 2021 with a forced sale value, of R 84 200.00, (VAT included).
- [5] On 8 March 2021, a written notice in terms of s 127 (2), was sent by prepaid registered mail, by BMW to van Vuuren, which advised van Vuuren that his vehicle had been officially assessed and assigned a value of R89 840.00.
- [6] On 12 May 2021, a tax invoice was issued in confirmation of the sale of the vehicle voetstoots on a public auction for the highest amount reasonably obtainable of R 51 750.00.
- [7] On 11 April 2022, a written notice in terms of s 127(5) was prepared by BMW to inform van Vuuren that the vehicle had been sold and there existed an outstanding amount of R 128 087 .52 that was due, owing and payable. Further that in terms of the agreement, same was to be paid within ten (10) business days of receipt of this notice. Importantly, the s127(5) notice concludes that credit agreement has been cancelled. On 24 March

² 34 of 2007.

2024, by way of registered email this notice dated 11 April 2022 in terms of s 127(5) was despatched to Van Vuuren.

[8] As of 24 April 2024 after the realised value from the sale of the motor vehicle, van Vuuren owed the sum of R 158 073.51 together with interest. In the premises, BMW contend that van Vuuren was in breach with his obligations in terms of the agreement. Therefore, BMW is entitled to the cancellation and/or termination of the agreement and to recover such damages as it may have suffered by reason of van Vuuren's breach of the agreement.

[9] Van Vuuren resists summary judgment on four pillars which will be dealt with disjunctively below.

[10] The rationale and requirements for the grant or refusal of summary judgment are trite and are set out *Joob Joob Investments*³ as follows:

"The rationale for summary judgment proceedings is impeccable. The procedure is not intended to deprive a defendant with a triable issue or a sustainable defence of her/his day in court. After almost a century of successful application in our courts, summary judgment proceedings can hardly continue to be described as extraordinary. Our courts, both of first instance and at appellate level, have during that time rightly been trusted to ensure that a defendant with a triable issue is not shut out. In the Maharaj case at 425G-426E, Corbett JA was keen to ensure, first, an examination of whether there has been sufficient disclosure by a defendant of the nature and grounds of his defence and the facts upon which it is founded. The second consideration is that the defence so disclosed must be both bona fide and good in law. A court which is satisfied that this threshold has been crossed is then bound to refuse summary judgment. Corbett JA also warned against requiring of a defendant the precision apposite to pleadings. However, the learned judge was equally astute to ensure that recalcitrant debtors pay what is due

³ 2009 (5) 1 (SCA) at 11G-12 D

to a creditor. Having regard to its purpose and its proper application, summary judgment proceedings only hold terrors and are drastic for a defendant who has no defence. Perhaps the time has come to discard these labels and to concentrate rather on the proper application of the rule, as set out with customary clarity and elegance by Corbett JA in the Maharaj case at 425G-426E."

- [11] The test for the granting of a summary judgment is whether the defendant has satisfied the court that he/she has a bona fide defence to the action. This entails whether the facts put up by the defendant raised a triable issue and a sustainable defence in law. It follows that the pleaded defence must not be bald, vague or sketch.

Prescription

- [12] Van Vuuren contends that the particulars of claim expressly allege that the vehicle forming the subject matter of the dispute was sold on auction on 12 May 2021. Van Vuuren opines that BMW's cause of action arose upon the date of this sale. It follows van Vuuren continues that the debt became due and enforceable on 12 May 2021. It is common cause that summons was served on van Vuuren on 13 May 2024, which is one day after the three-year prescriptive period. Van Vuuren avows that the service of the summons a day after the expiry of the prescriptive period contemplated in s 11(d) of the Prescriptive Act, (the PA)⁴ results in BMW's claim having prescribed. Moreover, Van Vuuren submits that any suggestion that the running of prescription has been interrupted is ill contrived and an afterthought which is categorically denied.

⁴ 68 of 1969

- [13] BMW retorts that the plea of prescription is unmeritorious. In support of this contention BMW avers that on 12 April 2022, Van Vuuren telephonically requested a detailed statement of his account accompanied by a request for a reduced settlement offer from BMW's external debt collector who in turn communicated same to BMW. On 13 April 2022, BMW's consultant provided the requested statement to the external debt collector. The same was then provided to van Vuuren.
- [14] BMW retorts that on 12 April 2022 the running of prescription was interrupted terms of s 14 of the PA due to the expressed and/or tacit acknowledgment of liability by van Vuuren. To underscore this submission BMW placed store on *KDL Residential v Empire Earth Investments*⁵ and *Madibeng Local Municipality v Public Investment Corporation Ltd*⁶.
- [15] Moreover, BMW claims that an acknowledgment of liability for purposes of s14 of the PA properly understood is a matter of fact and not law.⁷ It follows so BMW contend that on 12 April 2022, the interruption of prescription occurred when Van Vuuren acknowledged his debt. Accordingly, BMW maintain that prescription commenced a fresh on this date. Resultantly, prescription as a defence ought to be dismissed.

Deliberation

- [16] The central issue under this pillar is whether BMW's claim had prescribed. Prescription of a debt starts running as soon as the debt becomes due, or when knowledge of the debt becoming due can reasonably be expected of

⁵ (1135/2016) [2017] ZASCA 98.

⁶ (955/2019) [2020] ZASCA 157 (30 November 2020).

⁷ Road Accident Fund v Mothupi 2000 (4) SA 38 (SCA) para 37.

the creditor. Prescription is judicially interrupted when a process initiating a lawsuit for recovery of that debt is issued and served on the debtor. In our law, breach of contract is remediable through two mutually exclusive options — a claim for specific performance that seeks, notwithstanding the breach, to keep the contract alive, or cancellation of the contract and a claim for damages.⁸

[17] In *Rademeyer*⁹, Majiedt J writing for the majority distinguished the two mutually exclusive options as follows:

‘ When an election is made to sue for specific performance, axiomatically that lawsuit cannot possibly be a basis for the judicial interruption of the running of prescription in respect of cancellation and damages claim in respect of the same debt arising from breach of the contract. Judicial interruption of the running of prescription of the latter can self-evidently only occur when the election is made to cancel and sue for damages. And, plainly, where summons has been issued and served to determine liability in respect of damages for breach of contract within the three-year prescription period, it matters not that you sue after the three-year period to determine the quantum of the damages in respect of that same claim. This is because the later claim for the assessment of damages is a continuation of the first proceedings to determine liability. Proceeding then from the general to the specific – what are the facts in this case and how do these legal principles apply to them?’

[18] It is unassailable that on 24 February 2021 two key legal events materialised. Firstly, van Vuuren invoked the strictures of s 127(1)(a) and (b), secondly within these provisions the agreement was terminated. The cancellation of the agreement put paid to the first exclusive option as

⁸ Christie and Bradfield *Christie's Law of Contract in South Africa* 8 ed (LexisNexis, South Africa 2019) at 642, *Rademeyer v Ferreira* [2024] ZACC 24 paragraph 59.

⁹ *Ibid* paragraph 60.

adumbrated in *Rademeyer*. It follows that the second exclusive option, which is the damages claim was open for pursuance by BMW.

[19] BMW seems to concede that the summons was served a day after the three-year prescriptive period. The question that then engages this Court is whether the running of prescription had been interrupted. BMW relies on s 14 of the PA, which reads:

‘ 14. Interruption of prescription by acknowledgement of liability

(1) The running of prescription shall be interrupted by an express or tacit acknowledgement of liability by the debtor.

(2) If the running of prescription is interrupted as contemplated in subsection (1), prescription shall commence to run afresh from the day on which the interruption takes place or, if at the time of the interruption or at any time thereafter the parties postpone the due date of the debt, from the date upon which the debt again becomes due.’

[20] As I see it, the request for a settlement offer on 12 April 2022 constitutes an acknowledgement of liability that interrupted prescription in terms of s14 of the PA. It follows as a matter of course that BMW’s claim has not prescribed. Accordingly, this point must fail.

Non-compliance with s 127(2) and s127 (5) of the National Credit Act 34 of 2005.

[21] Van Vuuren asserts that these provisions are peremptory. Van Vuuren postulates that s127(2) obliges the credit provider after voluntary surrender to send a written notice to the consumer setting out the estimated value of the goods and other prescribed particulars. Following the sale, the van

Vuuren posits that s 127(5) makes it obligatory that a second written notice to the consumer reflecting the proceeds, deductions and resulting balance.

[22] In this matter, van Vuuren argues that BMW has not presented sufficient documentary proof that the s127(2) and (5) notices were sent to his domicilium address. Van Vuuren maintains that the absence of this proof is fatal. Van Vuuren states that compliance with s 127(2) and (5) is not a formality but a jurisdictional precondition to the enforcement. Differently put, van Vuuren contends that BMW's claim remains premature and incapable of meeting the drastic requirements for summary judgment. Conclusively, van Vuuren advances that BMW's failure to comply with the absolute requirements of s 127(2) and (5) renders the enforcement of the credit agreement premature and invalid.

[23] BMW suggest pertinent legislation recognizes the validity of delivery of notices by email.¹⁰ To this end, on 25 March 2024, BMW acting within the prescripts of binding legislation caused the notice in terms of s 127(5) to be emailed to van Vuuren per registered email. Additionally, a digital track and trace receipt was provided with digital delivery of the document which corroborates the delivery of the notice. Notably, BMW asserts that van Vuuren has failed to rebut the inference of delivery. In the circumstances BMW advance that there had been acquiescence with s127.

¹⁰ Section 65(1) of the National Credit Act 34 of 2005, section 19(4) of the Electronic Communications and Transactions Act 25 of 2002.

Deliberation

[24] On 8 March 2021, a written notice in terms of section 127(2) was sent by prepaid registered mail to van Vuuren. The contents of which informed van Vuuren that the vehicle had been valued in the amount of R89 840.00. On 12 May 2021, the vehicle was sold on auction for R51 750.00. A notice in terms of s127(5) dated 11 April 2022 was delivered via registered email on 25 March 2024.

[25] Ultimately, this Court must satisfy itself that BMW has placed before it facts which demonstrate that the notices as evinced in s 127(2) and (5) on a balance of probabilities have been sent to Van Vuuren. As I see it, the use of a track and trace receipt satisfy the requirements of delivery¹¹, particularly where Van Vuuren has not rebutted receipt. Resultantly, there is no merit in this point, and it falls to be dismissed.

The dispute regarding the sale price

[26] Van Vuuren alleges that BMW's assertion that the vehicle was sold for the highest price reasonably obtainable as required by s 127(4)(b) is questionable. This van Vuuren claims are founded on the mere contention of BMW that the motor vehicle realised R51 750.00 at auction. The substantive facts underpinning the realised amount is undisclosed by the BMW. Van Vuuren suggests that pertinent facts inter alia the auction conditions, the advertising process, the number of bidders, the reserve price or the market valuation of the vehicle at the time of sale have not been furnished by BMW. Without more, Van Vuuren submits this Court cannot

¹¹ Edwards v FirstRand Bank Limited t/a Wesbank (20734) [2016] ZASCA 144 (30 September 2016)

possibly determine whether there is strict compliance with the provisions of s 127(4)(b).

- [27] Van Vuuren proposes that the vehicle was sold for less than its fair market value and without proper notice to him, gives rise to a bona fide dispute which can only be determined at trial.

Deliberation

- [28] It is apparent that Van Vuuren misses the significance of the provisions of s128 and the potential remedy that is subsumed within. What is more, van Vuuren has not adduced any extrinsic evidence to bolster his contention that the vehicle was not sold for a fair market value. Consequently, this point suffers a similar fate as the previous two and is dismissed.

The certificate of balance on which the plaintiff's claim is founded is invalid and contractually non-compliant.

- [29] Van Vuuren claims that BMW's cause of action is founded on a certificate of balance, (COB) which is annexed to its particulars of claim. To this end, van Vuuren avers that the contract between BMW and himself provides that the COB shall constitute prima facie proof of indebtedness only if the COB is signed by the manager of BMW.
- [30] Differently put, van Vuuren alleges that BMW has placed no evidence before this Court to establish that the signatory to the COB was in fact the manager or that they possessed the requisite authority to issue same. Van Vuuren maintains that in the absence of proof the COB lacks contractual efficacy. Therefore, the COB lacks any evidential weight. This van Vuuren

declares has the inevitable consequence that in the absence of a compliant COB, BMW would be compelled to prove its claim in the ordinary way which would make summary judgment an inappropriate remedy.

[31] BMW concedes that the COB was signed by Leonie Du Plessis, Supervisor Asset and Loss Recovery, which is anchored in clause 17.1 of the agreement. It reads:

‘A certificate signed by any manager of the Seller (whose appointment need not be proved by the Seller) as to the amount that you are indebted to the Seller in terms of or arising out of this Agreement will be prima facie proof that the content of the certificate is correct. This certificate may be used for any purpose which included but is not limited to, obtaining judgment or any other order or relief that the Seller is entitled to in law, against you.’

[32] BMW avows against the backdrop of clause 17.1 of the agreement, this defence is meritless. This is so, BMW reasons because it is a question of construction as to whether the COB complies with the requirements of the certificate clause. Significantly, BMW contends that a supervisor is equivalent to a manager as envisaged by the certificate clause. BMW continues that the role of supervisor within BMW’s organogram is sufficiently senior as to equate to that of manager.

[33] Further BMW states that, in terms of resolutions dated 25 May 2021, the Supervisor Loss and Recovery, may sign a COB on behalf of BMW. As a final salvo, BMW maintains that the revised updated COB reflecting the full outstanding balance and accrued interest was signed by Jabulile Shembe, Collections Supervisor. Consequently, BMW proposes that this defence also be dismissed.

Deliberation

- [34] In *Senekal v Trust Bank of Africa Ltd*,¹² the court considered the purpose of a certificate of balance clause and held as follows:

“The main purpose of the certificate clause was clearly to facilitate proof of the amount of the principal debtor's indebtedness to the bank at any given time. A similar purpose underlies provisions, frequently found in reducible mortgage bonds and in bonds to cover future advances, that a prescribed certificate shall be sufficient or *prima facie* proof of the amount due thereunder.”

- [35] *Senekal* addressed the contents of the certificate in the following way:

“As to the second of the grounds referred to above, Mr *Du Toit's* contention was, in effect, that once such a certificate is shown to be suspect as to its accuracy or reliability in any respect whatever, it has no evidential value and must be entirely disregarded. I have no doubt that that broad contention must be rejected. There might be several items to which such a certificate relates, some of which may appear to be unassailable while others may either be shown to be inaccurate or appear to be of dubious reliability or might require some modification or adjustment. I can find no reason why in such circumstances the certificate is to be entirely disregarded merely because it is found or thought to be inaccurate or unreliable in certain respects. At the end of the case, when all the evidence (which includes the certificate) is in, the Court must decide whether the party upon whom the *onus* rests has discharged it on a proper balance of probabilities. As was pointed out by STRATFORD JA in *Ex parte Minister Of Justice: In re R v Jacobson and Levy* 1931 AD 466 at 478:

‘*Prima facie* evidence, in its more usual sense, is used to mean *prima facie* proof of an issue the burden of proving which is upon the party giving that evidence. If the *prima facie* evidence or proof remains unrebutted at the close of the case, it becomes ‘sufficient proof’ of the fact or facts (on the issues with which it is concerned)

¹² 1978 (3) SA 375 (A) at para 382A.

necessarily to be established by the party bearing the *onus* of proof. (*Salmons v Jacoby* 1939 AD 588 at 593.)”¹³

[36] Intertwined with a certificate of balance, is the availability of using extrinsic evidence to prove same. In *Inter-Union Finance Ltd v Franskraalstrand Bpk* the following approach in this regard was proposed:

‘The amount of the debt must be ascertained and the document must be sufficient in itself and not require extrinsic evidence to prove that the debt is due. This I think is the basic principle and is clear from cases such as *Inglestone v Pereira*, 1939 W.L.D. 55; *Martens v Rand Share and Broking Finance Corporation (Pty.) Ltd.*, 1939 W.L.D. 159; *Morris and Berman v Cowan* (1), 1940 W.L.D. 1, and cases referred to therein.’¹⁴

[37] Van Vuuren challenges the certificate of balance on the basis that the manager has not imprinted their signature on same. The unassailable facts that stare van Vuuren in the face, is that the characteristics of a certificate of balance cannot be viewed through a telescope. Apart from the signature of the manager, the certificate of should include the amount of the debt due and the applicable interest. Van Vuuren takes no issue with the latter two characteristics. The way I see it, the certificate of balance fulfils its primary purpose of providing *prima facie* proof of van Vuuren’s indebtedness and is compliant with the underlying agreement. Therefore, this point is dismissed.

[38] For van Vuuren to resist summary judgment, it was required of him to show a *bona fide* defence. In our law a *bona fide* defence is genuine and raises a triable issue, which encompasses a factual and or legal dispute. Whilst

¹³ Id 382 FG-H -383.

¹⁴ 1965 (4) SA 180 (W) paragraph 181G.

summary judgment has been described as a drastic remedy its purpose is to prevent recalcitrant debtors from employing legal gymnastics to circumvent payments when no bona fide defence exists. In the present case, van Vuuren has raised defences that lack merit. In the premises there is no basis for BMW's relief to be refused.

Costs

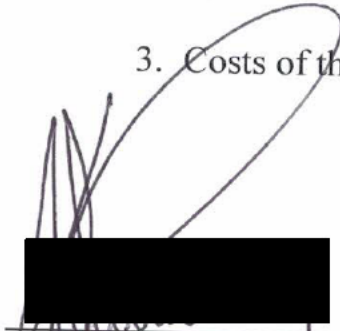
[39] Costs follow the result. There is no basis to deviate from this principle.

Order

[40] Resultantly, I make the following order:

1. The plaintiff is ordered to pay the defendant the sum of R158 073.51.
2. Interest on the sum of R158 073.51 at the prescribed rate of interest as from 16 February 2024 to date of final payment.

3. Costs of the suit.



A REDDY

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

APPEARANCES

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