REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

Case Number: 2025-059354

1. NOT REPORTABLE
2. NOT OF INTEREST TO OTHER JUDGES

Date: 23 March 2026

Signature: Khaba AJ

In the matter between:

BMW FINACIAL SERVICES (SOUTH AFRICA) PTY LIMITED Applicant

And

ARMANDT ERASMUS

[Identity Number: 9[…]] Respondent

In re:

BMW FINANCIAL SERVICES (SOUTH AFRICA) (PTY) LIMITED Plaintiff

And

ARMANDT ERASMUS

[Identity Number: 9[…]] Defendant

Neutral Citation: *BMW Financial Services (South Africa) Pty Limited v Armandt Erasmus (059354-2025) [2026] ZAGPJHC ------ (23 March 2026)*

Coram: Khaba AJ

Heard: 12 February 2026.

Delivered: 23 March 2026 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to CaseLines and by release to SAFLII. The date for hand-down is deemed to be 23 March 2026.

Summary: Application for Summary Judgment – prescription and acceleration clauses: The lingering ambiguity in instalment sale agreements- No facts pleaded to support bona fide defence – application granted.

ORDER

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1. The application for summary judgment is granted.

2. The instalment sale agreement concluded between the applicant and the respondent on 12 August 2020 is hereby cancelled.

3. The respondent is hereby ordered to pay to the applicant an amount of R 849 623.85.

4. Interest on the amount of R 849 623.85 referred to in paragraph 3 above at variable rate of prime plus, 0.868% per annum as from 10 April 2025 to date of final payment, such interest to be capitalised monthly in advance.

5. The respondent is ordered to pay the costs of this application on the scale as between attorney and client scale, including cost of counsel on scale C, such costs to be taxed on scale C.

JUDGMENT

KHABA AJ:

Introduction:

[1] This is an opposed application for summary judgment in terms of Rule 32 of the Uniform Rules of Court. The applicant (plaintiff in the main action) seeks confirmation of the cancellation of an instalment sale agreement, that was concluded with the respondent, (defendant in the main action); payment of a shortfall amount arising from the sale of a surrendered motor vehicle, interest thereon, and costs on an attorney-and-client scale.

[2] The respondent (defendant) resists the application for summary judgment on multiple grounds, including prescription, alleged non-compliance with sections 127(2), 127(3), and 127(5) of the National Credit Act 34 of 2005 *("the NCA"),* a challenge to the sale price achieved for the vehicle, and a dispute concerning the quantum of the indebtedness.

[3] The application is brought in terms of Rule 32(1) and (2) of the Uniform Rules of Court. The applicant contends that the respondent has not raised any *bona fide*

defence and that there exist no triable issues which would preclude the grant of summary judgment.

[4] The crisp issues for determination are:

[4.1] Whether the applicant has satisfied the requirements under Rule 32(1) and (2) of the Uniform Rules of Court.

[4.2] Whether the respondent raises any triable issues to prevent the applicant from seeking judgment.

[4.3] Whether the claim has become prescribed.

[4.4] Whether there was compliance with section 127(2) of the National Credit Act 34 of 2005 *("the NCA").*

[4.5] Whether the applicant may have sold the motor vehicle at public auction for an amount less than the private offer received.

[4.6] Whether there was compliance with section 127(5) of the NCA.

[4.7] Whether the amount of indebtedness is correct and/or whether the respondent is truly and lawfully indebted to the applicant for the amount claimed, interest, and costs as between attorney and client.

The Factual Background:

[5] The material facts, which are either common cause or established on the papers, are the following:

[6] On 12 August 2020, the parties concluded a written instalment sale agreement *("the agreement")* in terms of which the applicant financed the purchase by the respondent of a 2020 BMW X3 xDRIVE20d M SPORT (G01) motor vehicle with engine number 6[…] and chassis number W[…].

[7] The total amount repayable under the agreement, inclusive of finance charges, was R1,572,902.94, payable by way of 71 monthly instalments of R18,082.36 each, commencing on 1 November 2020, and a final balloon payment of R288,986.40 due on 1 October 2026.

[8] The applicant remained the owner of the vehicle pending full payment of all amounts due, a standard feature of instalment sale agreements.

[9] The respondent defaulted on his payment obligations from the very first instalment due on 01 November 2020, and the account remained in continuous arrears throughout the currency of the agreement.

[10] On 05 July 2022, the respondent voluntarily surrendered the vehicle to the applicant in terms of section 127(1)(a) and (b) of the NCA. At the time of surrender, the respondent's account was in arrears in the amount of R212,286.61.

[11] On 20 July 2022, the vehicle was valued by TUV SUD, an independent valuation company, at a forced sale value of R629,607.00.

[12] On 15 July 2022, a written notice in terms of section 127(2) of the NCA was dispatched by pre-paid registered mail to the respondent at his chosen *domicilium citandi et executandi:* […] Q[…] Street, N[…], Krugersdorp. The notice informed the respondent of the estimated value of the vehicle and his right to withdraw the surrender within ten business days, provided he was not in default. A copy of the notice and proof of dispatch are annexed to the amended

particulars of claim. On 13 July 2022, the same notice was also transmitted to the respondent via email to his nominated email address.

[13] The respondent acknowledges awareness of this email but claims the attachment was encrypted and inaccessible. The respondent notified the applicant of this difficulty on 14 July 2022 but did not pursue the matter further.

[14] On 24 August 2022, the vehicle was sold at public auction for R626,750.00. The net proceeds of the sale, amounting to R625,623.41 after deduction of permitted charges, were credited to the respondent's account.

[15] On 19 September 2022, a written notice in terms of section 127(5) of the NCA was dispatched by pre-paid registered mail to the respondent at his *domicilium* address, advising him of the sale, the gross amount realised, the net proceeds credited, and the resulting shortfall. A track and trace report confirms that the item (CV026220065ZA) arrived at the West Krugersdorp post office on 4 October 2022 and that a first notification was sent to the recipient.

[16] As of 10 April 2025, the outstanding shortfall balance stood at R849,623.85, which amount is verified by a certificate of balance signed by a manager of the applicant in accordance with clause 5.9 of the agreement.

[17] Summons was issued on 29 April 2025 and served personally on the respondent on 01 June 2025.

[18] The respondent delivered a notice of intention to defend on 11 July 2025, followed by a Rule 35(12) notice on the same date. The applicant replied thereto on 25 July 2025, making available all requested documents.

[19] On 29 July 2025, the applicant gave notice of intention to amend its particulars of claim, and the amended particulars were filed on 13 August 2025.

[20] The respondent delivered his special pleas and plea on the merits on 18 August 2025.

[21] The application for summary judgment was issued and served on 08 September 2025, well within the 15-day period prescribed by Rule 32. The respondent filed his opposing affidavit on 12 September 2025 and heads of argument on 18 November 2025, with amended heads filed on 11 February 2026.

The Applicant's Submissions:

[22] The applicant's case may be summarised as follows:

[22.1] The respondent admits the existence of the agreement, its terms and conditions, and the voluntary surrender of the vehicle.

[22.2] The respondent's special pleas and purported defences do not disclose a *bona fide* defence or any triable issue.

[22.3] The claim has not prescribed because the debt only became due when the applicant elected to enforce the agreement after the sale of the vehicle on 24 August 2022. Summons was served on 1 June 2025, well within the three-year prescriptive period. The applicant relies on the principle enunciated in *Standard Bank of South Africa Ltd v Miracle Mile Investments 67 (Pty) Ltd and Another* 2017 *(1) SA 185 (SCA)*[1] that where an acceleration clause affords the creditor the right of election, the debt only becomes due upon such election.

[22.4] There was proper compliance with section 127(2) of the NCA. The notice was dispatched by registered mail to the respondent's chosen *domicilium* address and also transmitted via email. The NCA does not

[1] Standard Bank of South Africa Ltd v Miracle Mile Investments 67 (Pty) Ltd and Another 2017 (1) SA 185 (SCA) at para 15.

require actual receipt; proof of dispatch to the correct address suffices, particularly where, as here, the respondent was in arrears and thus disentitled to withdraw the surrender in any event.

[22.5] The vehicle was sold for the best price reasonably obtainable at a public auction. The respondent's reliance on a WeBuyCars "offer" dated December 2021 is misplaced, as it predates the surrender by seven months and does not constitute a binding offer. In any event, the respondent, being in arrears, had no right to dictate the method of sale.

[22.6] There was proper compliance with section 127(5) of the NCA. The notice was dispatched by registered mail to the *domicilium* address, and the track and trace report confirms that it reached the collecting post office. Actual receipt is not required; the consumer bears the responsibility to collect registered mail.

[22.7] The amount claimed is correctly reflected in the certificate of balance, which constitutes prima facie proof of the debt in terms of clause 5.9 of the agreement. The respondent has produced no countervailing evidence to rebut this proof.

Whether the Respondent has raised a bona fide defence:

[23] The respondent raises the following defences in his special pleas, plea, and opposing affidavit:

[24] Prescription: The respondent contends that any part of the claim which became due more than three years before service of summons (i.e., before 01 June 2022) has prescribed. The respondent points to his first default on 01 November 2020 and the arrears of R212,286.61 by July 2022. Relying on *Trinity Asset*

Management (Pty) Ltd v Grindstone Investments (Pty) Ltd [2016] ZASCA 135[2], The respondent argues that a debt repayable on demand becomes due immediately upon lending.

[25] The Non-compliance with section 127(2): The respondent avers that he never received a legible section 127(2) notice. The email attachment of 13 July 2022 was encrypted and inaccessible, and despite notifying the applicant on 14 July 2022, no legible notice was ever provided. The respondent denies receiving any notice by registered post and invokes *BMW Financial Services (SA) (Pty) Ltd v Donkin* (which he cites as [2021] ZASCA 115, which appears to refer to a different judgment) for the proposition that mere dispatch is insufficient without actual delivery. It seems peculiar to refer to a non-existent case in the argument of one's case, as correctly pointed out by the applicant's heads of argument.

[26] The failure to obtain best price section 127(3): The respondent contends that the applicant failed to sell the vehicle for the best price reasonably obtainable. The respondent points to a WeBuyCars offer of R750,000.00 which he allegedly provided at the time of surrender, yet the vehicle was sold for only R626,750.00. The respondent relies on *Firstrand Bank Ltd v Petersen [2011] ZAWCHC* for the proposition that failure to achieve a proper market-related price undermines the enforceability of any shortfall claim. I note once again that this is a non-existent piece of case law- as correctly confirmed by the applicant.

[27] The non-compliance with section 127(5)**:** The respondent avers that he never received a section 127(5) post-sale notice. The respondent denies that mere dispatch by registered post constitutes compliance without proof of actual delivery.

[28] The dispute as to quantum: The respondent disputes the correctness of the claimed amount, contending that the certificate of balance is inadmissible, that

[2] Trinity Asset Management (Pty) Ltd v Grindstone Investments (Pty) Ltd [2016] ZASCA 135 at para 18-20.

the calculation of interest is unexplained and excessive given that the agreement was cancelled after only two years, and that the applicant has failed to provide a proper post-sale reconciliation. [28]

[29] The defects in the applicant's affidavit: The respondent argues that the deponent to the applicant's affidavit lacks personal knowledge of the facts, that the affidavit is formulaic and based on hearsay, and that it fails to satisfy the requirements of Rule 32(2)(b). The respondent relies on *Absa Bank Ltd v De Villiers and Another 2009 (5) SA 40 (C)*[3] for the proposition that an affidavit which merely reproduces computer-generated figures without identifying the underlying source does not meet the Rule 32 standard.

[30] Rule 35(12) non-compliance: The respondent complains that the applicant failed to comply with his Rule 35(12) notice, thereby depriving him of documents necessary to assess his defence.

The Legal Framework:

[31] The nature of summary judgment proceedings is well-settled in our law. It is a drastic remedy that closes the doors of the court to a defendant who has entered appearance to defend without a *bona fide* defence. As the Constitutional Court observed in *Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A)*[4], summary judgment may only be granted where the plaintiff's claim is unanswerable.

[32] However, the notion that summary judgment is *"extraordinary"* in the sense of being rarely granted has evolved. In *Tumileng Trading CC v National Security and Fire (Pty) Ltd 2020 (6) SA 624 (WCC)*[5] , Binns-Ward J stated:

[3] Absa Bank Ltd v De Villiers and Another 2009 (5) SA 40 (C) at 46E-G.
[4] Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A) at 426 at 426.
[5] Tumileng Trading CC v National Security and Fire (Pty) Ltd 2020 (6) SA 624 (WCC) at para 13.

"Rule 32(3), which regulates what is required from a defendant in its opposing affidavit, has been left substantially unamended... That means that the test remains what it always was: has the defendant disclosed a bona fide (i.e. an apparently genuinely advanced, as distinct from sham) defence?"

[33] The requirements for a defendant to successfully resist summary judgment are firmly established in our jurisprudence. In the seminal case of *Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A)*[6], Corbett JA held that a defendant must:

"Disclose the nature and grounds of his defence and the material facts upon which it is founded, and that he do so with sufficient particularity and completeness to enable the Court to decide whether the affidavit discloses a bona fide defence. The defendant is not required to deal exhaustively with the facts and the issues raised and to satisfy the Court that he would inevitably succeed at the trial; it is sufficient if he sets out facts which, if established at the trial, would constitute a good defence."

[34] Vague or speculative allegations will not suffice. The court is not obliged to search for a defence among loosely made allegations (*Breitenbach v Fiat SA (Edms) Bpk 1976 (2) SA 226 (T)*[7]). The defendant must set out facts with sufficient particularity and detail to enable the court to assess whether the defence is bona fide.

[35] In deciding whether to grant summary judgment, the court looks at the matter "at the end of the day" on all the documents properly before it (*Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture 2009 (5) SA 1 (SCA)*[8]).

The Evaluation of the Respondent's bona fide Defences:

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[6] Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A) at 426A-C.
[7] Breitenbach v Fiat SA (Edms) Bpk 1976 (2) SA 226 (T) at 228
[8] Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture 2009 (5) SA 1 (SCA) at para 32

The Compliance with Rule 32(2)(b):

[36] The respondent's attack on the applicant's founding affidavit is without substance. Ms. Leoni du Plessis, the deponent, states clearly that she is the supervisor: Asset and Loss Recoveries of the applicant; that all records of the respondent's account are under her control; that she has personally inspected them in the ordinary course of her duties; and that she has acquainted herself with the outstanding balance, interest, costs, and payment history. Ms. Du Plessis further confirms that she has access to the applicant's ledgers, books of account, and documents, and that she has familiarised herself with the history of the litigation.

[37] In *Absa Bank Ltd v De Villiers and Another 2009 (5) SA 40 (C)*[9], the court held that an affidavit in support of summary judgment must set out facts which would be admissible in evidence and demonstrate that the deponent has personal knowledge. Ms. Du Plessis has done precisely that. She has identified the source documents, attached them, and verified their contents. The affidavit is not formulaic; it is detailed, specific, and complies fully with Rule 32(2)(b).

[38] The respondent's reliance on *Absa Bank Ltd v De Villiers* is inapposite. In that case, the affidavit merely reproduced computer-generated figures without identifying the underlying source. Here, Ms. Du Plessis has done considerably more. The criticism fails.

The Prescription:

[39] The respondent's prescription defence is fundamentally misconceived. Sections 10, 11(d) and 12 of the Prescription Act 68 of 1969 provide that a debt is

[9] Absa Bank Ltd v De Villiers and Another 2009 (5) SA 40 (C) at para 20-21.

extinguished after three years from the date upon which it becomes due. The critical inquiry is: when did the debt become due?

[40] In *Standard Bank of South Africa Ltd v Miracle Mile Investments 67 (Pty) Ltd and Another 2017 (1) SA 185 (SCA)*[10], the Supreme Court of Appeal held:

"Contrary to the provisions of the old Act, s 12(1) of the current Act provides that prescription begins to run when the debt becomes 'due' and not when it first accrued. Thus, where an acceleration clause affords the creditor the right of election to enforce the clause upon default by the debtor, the debt in terms of the acceleration clause only becomes due when the creditor has elected to enforce the clause. Before an election by the creditor, prescription does not begin to run."

[41] The respondent seeks to rely on *Trinity Asset Management (Pty) Ltd v Grindstone Investments (Pty) Ltd [2016] ZASCA 135*[11]**.** That case is distinguishable. It concerned a loan repayable on demand, where the debt becomes due immediately upon lending. The present matter concerns an instalment sale agreement with an acceleration clause. The distinction is critical and was expressly recognised in *Trinity*[12] itself at para 18:

"Miracle Mile dealt with the right to enforce an acceleration clause in a agreement. It also dealt with a long-term loan that had been secured by mortgage bonds registered over immovable property. Very different considerations apply in such a situation; as the judgment points out, prescription runs against arrear instalments, as from dates when payment thereof was due, which differs from future instalments, which become due as a result of the requisite election by the creditor to accelerate payments of these future instalments, by reason of the debtor's breach."

[42] The respondent defaulted on individual instalments as they fell due. Those instalments prescribed three years after each due date. But the applicant does

[10] Bank of South Africa Ltd v Miracle Mile Investments 67 (Pty) Ltd and Another 2017 (1) SA 185 (SCA) at para 25.
[11] Supra note 2.
[12] Ibid at para 18.

not claim those arrears. The applicant claims the *shortfall* after sale of the vehicle – a debt that could only become due when the applicant elected to enforce the agreement following the sale and the quantum could be ascertained.

[43] The vehicle was sold on 24 August 2022. Only then could the applicant quantify its damages and demand payment of the shortfall. Summons was served on 1 June 2025 – within three years of the sale. The debt has not prescribed.

[44] Even if one were to consider the arrears component, the respondent's own chronology shows that the arrears accumulated during 2022. Summons was served in June 2025, which would still be within three years for any arrears arising after June 2022. The respondent has not identified which specific components of the claim he contends have prescribed. The onus is on the party invoking prescription to allege and prove the date of inception. The respondent has failed to discharge this onus. The special plea of prescription must therefore fail.

The Section 127(2) Compliance:

[45] The respondent's complaint that he did not receive a legible section 127(2) notice does not raise a triable issue.

[46] Section 127(2) of the NCA provides: "If the consumer surrenders goods under subsection (1), the credit provider must – within 10 business days after receiving the goods give the consumer written notice setting out the estimated value of the goods."

[47] The provision requires the credit provider to *"give"* notice. It does not require actual receipt by the consumer.

[48] In *Williams v Shackleton Credit Management [2023] ZAWCHC 246*[13], the court held that

"The law does not require that the notice in fact come to the consumer's knowledge. What is required is that the credit provider establish that the notice was delivered by registered post to the post office that would send a delivery notice to the consumer."

[49] The Constitutional Court in *Sebola and Another v Standard Bank of South Africa Ltd and Another [2012] ZACC 11; 2012 (5) SA 142 (CC)*[14] and *Kubyana v Standard Bank of South Africa Ltd [2014] ZACC 1; 2014 (3) SA 56 (CC)*[15], the Constitutional Court held that:

"While the credit provider must take reasonable steps to bring the notice to the consumer's attention, proof of dispatch to the correct address, together with a track and trace report confirming delivery to the relevant post office, is sufficient."

[50] The applicant has provided the proof that the section 127(2) notice was dispatched by registered mail to the respondent's chosen domicilium address. [33] A copy of the notice itself. The is evidence that the same notice was also transmitted via email to the respondent on 13 July 2022. [35]

[51] The respondent acknowledges receiving the email and being aware of the notice. The respondent's complaint is that the attachment was encrypted and inaccessible. This complaint is unpersuasive. The email itself stated that the attachment was password-protected and could be opened using the respondent's identity number – a standard security measure to protect personal information, mandated by section 69 of the Protection of Personal Information

[13] Williams v Shackleton Credit Management [2023] ZAWCHC 246 at para 38.
[14] Sebola and Another v Standard Bank of South Africa Ltd and Another 2012 (5) SA 142 (CC) at para 87.
[15] Kubyana v Standard Bank of South Africa Ltd [2014] ZACC 1; 2014 (3) SA 56 (CC) para 39.

Act 4 of 2013. The respondent does not say that he attempted to use his identity number and failed. The respondent merely assumed inaccessibility.

[52] More fundamentally, the respondent was in arrears at the time of surrender. Section 127(3) of the NCA provides that a consumer may only withdraw the surrender if he is *not* in default. The respondent's arrears of R212,286.61 meant he had no right to withdraw in any event. Any defect in the notice therefore caused him no prejudice. Our courts do not grant relief for technical non-compliance where no prejudice is shown (*African National Congress v Chief Electoral Officer 2020 (4) SA 1 (CC)*[16]).

[53] The respondent's reliance on *BMW Financial Services (SA) (Pty) Ltd v Donkin* is misplaced. Firstly, the case cited by the respondent does not exist. There is no reported SCA decision under that name and citation. The closest is *Padayachee v The State* (679/2020) [2021] ZASCA 115[17], which is entirely unrelated. The KwaZulu-Natal decision in *BMW Financial Services (SA) (Pty) Ltd v Donkin* [2009] *ZAKZDHC 17; 2009 (6) SA 63 (KZD)*[18] involved a defendant who failed to disclose any defence at all – the opposite of the present situation. This defence does not raise a triable issue.

The Section 127(3) – Best Price Reasonably Obtainable:

[54] The respondent's contention that the vehicle should have been sold to WeBuyCars for R750,000.00 rather than at auction for R626,750.00 is unsustainable for multiple reasons.

[16] African National Congress v Chief Electoral Officer 2020 (4) SA 1 (CC) at para 39.
[17] Padayachee v The State (679/2020) [2021] ZASCA 115.
[18] BMW Financial Services (SA) (Pty) Ltd v Donkin [2009] ZAKZDHC 17; 2009 (6) SA 63 (KZD) at para 34.

[55] Firstly, the WeBuyCars document relied upon by the respondent is dated 09 December 2021 – some seven months *before* the voluntary surrender on 05 July 2022. Vehicle values fluctuate; an "offer" from December 2021 cannot be equated to market value in July/August 2022. Moreover, the document is an "inspection summary," not a binding purchase offer. It contains no acceptance period, no terms, and no evidence that WeBuyCars would have honoured that price seven months later.

[56] Secondly, section 127(4)(b) of the NCA requires the credit provider to sell the goods "as soon as reasonably practicable" for "the best price reasonably obtainable." This does not mean the highest possible price in the abstract, but the best price achievable in the circumstances, having regard to the need for a prompt sale. The duty is one of reasonable care, not strict liability

[57] Thirdly, the applicant obtained an independent valuation from TUV SUD, a reputable valuation company, which assessed the forced sale value at R629,607.00. The vehicle sold for R626,750.00 – within 0.45% of the valuation. This strongly suggests that the price achieved was indeed the best reasonably obtainable.

[58] Fourthly, the respondent, being in arrears, had no right to dictate the method of sale. The applicant, as owner, was entitled to dispose of the vehicle in its discretion after the appraised value was determined.

[59] Fifthly, nothing prevented the respondent from approaching the National Consumer Tribunal under section 128 of the NCA to review the sale if he genuinely believed the price was inadequate. He did not do so. This court may infer that he did not do so because he knew the challenge would be meritless.

[60] The respondent's reliance on *Firstrand Bank Ltd v Petersen* [2011] ZAWCHC is unhelpful. That unreported judgment (which the respondent has not provided) is

not binding authority, and in any event, the facts are distinguishable. In *Petersen*, the credit provider sold the vehicle privately for a low price without attempting to obtain a market-related valuation. Here, the applicant obtained an independent valuation and sold at public auction. This defence does not raise a triable issue.

The Section 127(5) Compliance:

[61] The respondent's defence that he did not receive the section 127(5) notice is equally without merit.

[62] Section 127(5) of the NCA requires the credit provider, after selling the goods, to:

> "credit or debit the consumer with a payment or charge equivalent to the proceeds of the sale, less any expenses reasonably incurred by the credit provider in connection with the sale of the goods; and
> (b) deliver to the consumer a written notice stating –
> (i) the settlement value of the agreement immediately before the sale;
> (ii) the gross amount realised on the sale;
> (iii) the net proceeds of the sale after deducting any expenses allowed under paragraph (a); and
> (iv) the amount credited or debited to the consumer's account."

[63] The applicant has provided:

[62.1] The section 127(5) notice dated 19 September 2022, which contains all the required information.

[62.2] Proof of dispatch by registered mail to the respondent's *domicilium* address.

[62.3] A track and trace report confirming that the item (CV026220065ZA) arrived at the West Krugersdorp post office on 4 October 2022 and that a first notification was sent to the recipient.

[64] In *Sebola*[19] , the Constitutional Court held that proof of dispatch and a track and trace report confirming arrival at the relevant post office constitutes sufficient compliance. Actual receipt by the consumer is not required. The consumer must collect the registered item; if he fails to do so, he cannot complain.

[65] The respondent still resides at the same address. The notice was sent to the correct address and reached the correct post office. The applicant did all that was required of it.

[66] The respondent's repeated invocation of *Donkin*[20] cannot salvage this defence. In *Donkin*[21]**,** the credit provider could not prove that the notice had even reached the post office. Here, the track and trace report provides that proof conclusively. This defence does not raise a triable issue.

The Quantum and Certificate of Balance:

[67] The respondent's challenge to the quantum claimed is unavailing. Clause 5.9 of the agreement provides:

> "A certificate issued by a Manager of the Plaintiff (whose appointment need not be proved by the Plaintiff) would be regarded as prima facie proof of the amount that the Defendant is indebted to the Plaintiff, and same may be used for any purposes, which includes, but not limited to, obtaining a judgment or any other order or relief that the Plaintiff is entitled to in law against the Defendant."

[19] Supra note 14 at para 76
[20] Supra note 18.
[21] Ibid

[68] In *Absa Bank Ltd v Le Roux and Others 2014 (1) SA 475 (SCA)*[22], the Supreme Court of Appeal held:

> "The purpose of the certificate is to create an evidential onus on the surety to negate the bank's allegations as to the quantum and the cause of any debt... The certificate stands as prima facie proof of the substance of its contents in any litigation... It has that effect not as an incident of any law of general application, but only because the parties have agreed in their contract that it should do so."

[69] The respondent has not provided any countervailing evidence to negate the certificate. The respondent merely denies the amount. A bare denial does not rebut prima facie proof. The certificate of balance *(annexure "I")* reflects the amount of R849,623.85 as at 10 April 2025. An updated certificate *(annexure "BMW5")* reflects R889,020.02 as at 02 September 2025. The applicant, however, persists with the original amount claimed – a concession in the respondent's favour that the court is not obliged to accept but may in its discretion.

[70] The statement of account *(annexure "H1" and "H2")* provides a detailed breakdown of how the shortfall was calculated, including original finance charges, payments received, sale proceeds credited, and interest. There is no mystery in the calculation. The respondent's suggestion that the calculation is *"unexplained"* is simply incorrect. This defence does not raise a triable issue.

The Rule 35(12) Point:

[71] The respondent's complaint about alleged non-compliance with his Rule 35(12) notice is factually incorrect.

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[22] Absa Bank Ltd v Le Roux and Others 2014 (1) SA 475 (SCA) at para 16.

[72] Rule 35(12) provides that any party may require any other party to make available for inspection any document referred to in the pleadings or particulars. The respondent served his notice on 11 July 2025. The applicant served its reply on 25 July 2025, making available all requested documents, including the section 127 notices, proof of dispatch, track and trace reports, and statements of account.

[73] If the respondent was dissatisfied with the reply, he should have brought an application to compel in terms of Rule 35(13). The respondent did not do so. Instead, he filed his plea on 18 August 2025 – an election to proceed that waived any further complaint about discovery.

[74] In any event, the documents sought go to the merits of the respondent's defences. Having found those defences to be without substance, any complaint about discovery is moot. This point has no merit.

The Respondent's mis reliance on Authority:

[75] Before concluding, it is necessary to comment on the respondent's citation of authority. The respondent's heads of argument refer to several cases, including *BMW Financial Services (SA) (Pty) Ltd v Donkin* [2021] ZASCA 115 and *Firstrand Bank Ltd v Petersen* [2011] ZAWCHC. As the applicant correctly points out, these cases do not exist. The citation of fictitious authorities, whether through negligence or design, is unacceptable and undermines the proper administration of justice.

The overall Assessment:

[76] Standing back and considering the matter as a whole, I am satisfied that the respondent has not disclosed a *bona fide* defence to the applicant's claim. The defences raised are without substance and do not give rise to any triable issue.

[77] The respondent's case is built on a series of misconceptions and misstatements. The respondent conflates arrears of instalments with the shortfall debt, leading to an erroneous prescription argument.

[78] The respondent demands actual receipt of statutory notices where the law requires only proper dispatch to the chosen address. The respondent relies on a stale document from December 2021 as if it were a binding offer in August 2022.

[79] The respondent ignores the fact that his own arrears deprived him of any right to withdraw the surrender. The respondent disputes quantum without producing any countervailing evidence. The applicant has established a clear and unanswerable case. The respondent's notice of intention to defend was delivered solely for the purpose of delay. In these circumstances, summary judgment is not only appropriate but necessary to prevent the abuse of Court process.

[80] Having examined each of the respondent's alleged defences, I am compelled to conclude that none of them meets the requirements set out in *Maharaj* and *Breitenbach*. The respondent has not disclosed a *bona fide defence*. The respondent has not raised any triable issue.

[81] In *Tshwane City v Blair Atholl Homeowners Association 2019 (3) SA 398 (SCA)*[23]**,** the Supreme Court of Appeal reiterated that summary judgment may be granted if the defendant fails to set out a defence that is both bona fide and good in law. The respondent has failed to do so.

[23] Tshwane City v Blair Atholl Homeowners Association 2019 (3) SA 398 (SCA) at paragraph 32.

[82] The application for summary judgment must, accordingly, succeeds.

Costs:

[83] The applicant seeks costs on the scale as between attorney and client, including the costs of counsel on Scale C.

[84] Clause 5.10 of the agreement provides: "In the event of any legal action being instated by the Plaintiff, the Defendant would be responsible for costs on an attorney and client scale."

[85] Such contractual provisions are enforceable, provided they are not unconscionable or contrary to public policy *(Barkhuizen v Napier 2007 (7) BCLR 691 (CC)*[24]*).* There is nothing unconscionable about this provision. It was freely negotiated between the parties, and the respondent, a major male, is presumed to have understood its import.

[86] The respondent has opposed this application without merit, necessitating the employment of counsel. The issues raised were substantial, requiring detailed analysis of the NCA, the Prescription Act, and the Uniform Rules. Scale C is appropriate given the complexity of the issues, the volume of documentation.
There is no basis for the punitive costs order *de bonis propriis* sought by the respondent against the applicant's attorneys. The applicant has at all times conducted itself properly and complied with all statutory and procedural requirements. The suggestion that the attorneys should be personally liable for costs is entirely without foundation.

[24] Barkhuizen v Napier 2007 (7) BCLR 691 (CC) at para 22.

[87] In the circumstances, and in accordance with the terms of the agreement, I am satisfied that a costs order on the attorney and client scale is appropriate.

Order:

[88] In the circumstances, the following order is made:

1. The application for summary judgment is granted.

2. The instalment sale agreement concluded between the applicant and the respondent on 12 August 2020 is hereby cancelled.

3. The respondent is ordered to pay the applicant an amount of R 849 623.85.

4. The interest on the amount of R 849 623.85 referred to in paragraph 3 above at a variable rate of 0.868% per annum above the prime overdraft rate as from 10 April 2025 to date of final payment, such interest to be capitalised monthly in advance.

5. The respondent is ordered to pay the costs of this application on the scale as between the attorney and client scale, including costs counsel on scale C, such costs to be taxed on scale C.

KHABA AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

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Date of Hearing:	12 February 2026
Date of Judgment:	23 March 2026