REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: **2025/011525**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

[redacted]

14 April 2026
DATE SIGNATURE

In the matter between:

BMW FINANCIAL SERVICES (SA) (PTY) LTD Plaintiff

and

ZANENZA HOLDINGS (PTY) LTD Defendant

JUDGMENT

MODIBA, J

[1] This is an opposed application for summary judgment. The applicant seeks confirmation of the cancellation of an instalment sale agreement concluded on 24 January 2017, payment of the shortfall amount arising from the sale of a motor vehicle after its voluntary surrender, interest thereon, and costs on an attorney-and-client scale.

[2] The respondents resist summary judgment on various grounds, including prescription; alleged non-compliance with sections 127(2) and 127(5) of the National Credit Act 34 of 2005 (“the NCA”); the existence of an alleged second agreement; the contention that the vehicle should have been sold for a higher value; alleged non-performance by the Applicant; and a denial of the amount of indebtedness.

[3] The question before this Court is whether the respondents have disclosed a *bona fide* defence that is good in law and capable of being sustained at trial.

[4] The background facts are largely common cause. The applicant’s claim against the first respondent is founded on a written instalment sale agreement in terms of which the applicant financed the purchase of a 2016 BMW 650i Convertible M Sport A/T. The agreement was approved in the name of the first respondent, a juristic person. Ownership of the vehicle remained vested in the applicant until full payment. The Second Respondent bound herself as surety and co-principal debtor for the obligations of the First Respondent.

[5] The first respondent breached the agreement by failing to make payment of the monthly instalments and the final balloon payment. As a result, and on 23 January 2024, the second respondent gave notice of voluntary surrender of the vehicle. The vehicle was thereafter valued by an independent valuer and sold at public auction on 20 March 2024 for R448 500.00. The net proceeds were credited to the first respondent’s account. After crediting the net proceeds, the applicant quantified the outstanding balance at R586 302.25 and instituted action for payment thereof. Summary judgment is sought on this basis.

[6] The test applicable to summary judgment is well settled. A defendant is required to disclose fully the nature and grounds of the defence and the material facts upon which it is founded. A mere denial or the raising of vague or technical disputes does not suffice. While summary judgment is a robust remedy, it is no longer regarded as extraordinary. Courts are required to consider, on all the papers

properly before them, whether the defence advanced is genuine, bona fide and raises a triable issue.[1]

The defences raised

<u>Prescription</u>

[7] The Respondents contend that the Applicant's claim has become prescribed. In matters where a claim for damages arises after cancellation of a contract, prescription only commences running when the debt becomes due and capable of determination. As held in *Standard Bank of South Africa Ltd v Miracle Mile Investments 67 (Pty) Ltd and Another*[2] in terms of section 12(1) of the Prescription Act,[3] prescription begins to run when the debt becomes 'due' and not when it first accrued. In the present case, the applicant could only quantify its damages once the vehicle had been sold and the net proceeds credited. That occurred on 20 March 2024. The summons was served on 5 February 2025, well within the three-year prescription period.

[8] In addition, the correspondence relied upon by the Respondents themselves reflects an express or tacit acknowledgment of liability in January 2024, which had the effect of interrupting prescription. The special plea of prescription is therefore devoid of merit and cannot be sustained.

<u>Alleged non-compliance with section 127 of the NCA</u>

[9] The respondents allege that the applicant failed to comply with sections 127(2) and 127(5) of the National Credit Act 34 of 2005 (NCA).[4] In terms of section 4(1)(a), the

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[1] *Maharaj v Barclays National Bank Ltd* 1976 1 SA 418 (A), *Joob Joob Investments v Stocks Mavundla Zek JV* [2009] All SA 407 (SCA) paragraph 32, p 415; 2009 (5) SA at 12A-D.

[2] 2017 (1) SA 185 (SCA), par [15].

[3] Act 68 of 1969.

[4] Sections 127(2) and 127(5) of the NCA provide as follows:

"**127 Surrender of goods**

(2) Within 10 business days after the later of-

(a) receiving a notice in terms of subsection (1) *(b)* (i); or

(b) receiving goods tendered in terms of subsection (1) *(b)* (ii),

NCA does not apply to a credit agreement if the consumer is a juristic person whose asset value or annual turnover equals or exceeds the threshold determined by the Minister in terms of section 7(1).

[10] The applicant correctly submits that the agreement is not subject to the NCA, as the first respondent is a juristic person whose asset value or turnover exceeded the statutory threshold at the time the agreement was concluded, alternatively because the transaction constitutes a large agreement as contemplated in the Act. Therefore, any notices sent referring to section 127 were not legally required and cannot create rights where the Act does not apply. This defence is therefore unsustainable.

Alleged second agreement

[11] The respondents contend that a second agreement came into existence on the strength of email correspondence exchanged in December 2023 and January 2024. A proper reading of the correspondence demonstrates no consensus on new terms, no intention to waive rights under the original agreement, and no reduction of any alleged variation to writing as required by the agreement itself. At best for the respondents, the emails reflect attempts to engage regarding the disposal of

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a credit provider must give the consumer written notice setting out the estimated value of the goods and any other prescribed information.

(5) After selling any goods in terms of this section, a credit provider must-

(a) 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) give the consumer a written notice stating the following:

(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 the credit provider's permitted default charges, if applicable, and reasonable costs allowed under paragraph *(a)*; and

(iv) the amount credited or debited to the consumer's account."

the vehicle and possible settlement discussions thereafter. This does not amount to the conclusion of a binding second agreement.

Sale of the vehicle at an allegedly undervalue

[12] The respondents submit that the vehicle should have been sold for a higher amount. The respondents voluntarily surrendered the vehicle while in default. The applicant, as owner, was entitled to have the vehicle appraised and sold for the best price reasonably obtainable. The vehicle was sold at public auction after an independent valuation was obtained.

[13] The respondents' reliance on historic offers made years earlier does not establish that the applicant acted unreasonably or in breach of its obligations. This defence does not raise a triable issue.

Alleged non-performance by the applicant

[14] The respondents deny that the applicant performed its obligations under the agreement. This contention is contradicted by the undisputed fact that the applicant financed the purchase of the vehicle and placed the first respondent in possession thereof. The breach relied upon throughout is the respondents' failure to make payment. This defence is no more than a bare denial and falls well short of the standard required to resist summary judgment.

Denial of the amount of indebtedness

[15] The respondents deny liability for the amount claimed. The agreement expressly provides that a certificate of balance constitutes prima facie proof of the indebtedness. The applicant relies on the certificate and has discovered it. The deponent to the summary judgment affidavit confirms familiarity with the applicant's records and verifies the amount outstanding as reflected on the certificate. A bald

denial does not displace the evidential weight of the certificate of balance and does not establish a defence worthy of trial.

In conclusion

[16] None of the defences raised by the respondents, whether considered individually or cumulatively, disclose a *bona fide* defence that is legally sustainable or capable of success at trial. The applicant has established its entitlement to summary judgment with costs on an attorney-and-client scale as provided for in the agreement.

[17] In the result, the following order is made:

Order

1. Summary judgment is granted in favour of the Applicant against the Respondents, jointly and severally, the one paying the other to be absolved, in the amount of **R586 302.25**.
2. Interest on the aforesaid amount at the rate of **prime plus 1.000% per annum** calculated from **20 November 2024** to date of final payment.
3. Costs of suit on the scale as between **attorney and client**.

[redacted]

LT MODIBA
JUDGE OF THE HIGH COURT
JOHANNESBURG

Appearances

For the Plaintiff:	Adv S Fisher Klein
Instructed by:	Velile Tinto and Associates
For the Defendant:	Adv Nxumalo
Instructed by:	Tshabalala Attorneys
Date of hearing:	26 February 2026
Date of judgment:	14 April 2026

This Judgment is handed down electronically by circulation to the parties' legal representatives by email and publication on Case Lines and SAFLII. The date for the handing down is deemed 10am on 14 April 2026.