REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: **8319/2023**
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES
DATE **7 April 2026**
SIGNATURE

In the matter between:

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

and

LC VUMA Respondent/Defendant

Date of Hearing: 9 March 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email. The time and date for hand-down is deemed to be 7 April 2026.

JUDGMENT

JANSE VAN RENSBURG AJ

INTRODUCTION AND FACTUAL BACKGROUND

[1] This is an application for summary judgment in terms of Uniform Rule of Court 32. The Applicant, a registered credit provider, seeks confirmation of the cancellation of an instalment sale agreement concluded on or about 3 September 2021 at Oakdene, the return of the motor vehicle that was the subject of the agreement, retention of all amounts already paid by the Respondent, and ancillary relief. The balance of the relief (quantification of any outstanding damages after return of the vehicle) is postponed *sine die*.

[2] The agreement was for the purchase by the Respondent of a 2019 BMW 320i M Sport Launch Edition A/T (G20) with engine number F[...] and chassis number W[...].

[3] The recoverable amount (capitalised cost) was R953 696.32. The Respondent financed the purchase through the Applicant.

[4] It is common cause that the Respondent defaulted on his monthly obligations from the outset (the first instalment due in November 2021 was not paid timeously).

[5] The Applicant issued combined summons on 31 January 2023. The Respondent delivered a plea on 6 December 2023 in which he admitted the

conclusion of the agreement and the salient terms thereof, but contended that the arrears had been 'liquidated' by subsequent payments.

[6] On 22 December 2023 the Applicant launched the present application for summary judgment. The application was served on the Respondent's attorneys by email on the same day.

[7] The Respondent delivered his affidavit resisting summary judgment only on 7 February 2025, together with a request for condonation for the late filing.

LEGAL PRINCIPLES APPLICABLE TO SUMMARY JUDGMENT

[8] Summary judgment is an extraordinary and drastic remedy designed to enable a plaintiff to obtain swift judgment where the defendant has no *bona fide* defence and has entered an appearance to defend solely for the purpose of delay[1].

[9] Navsa JA[2] very appositely set out the nature of summary judgment proceedings:

> "*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*

1 **Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A)** at 423G-H; **Breitenbach v Fiat SA (Edms) Bpk 1976 (2) SA 226 (T)** at 228E-F;

2 **Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture 2009 (5) SA 1 (SCA)** at para [31] & [32];

*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 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*."

[10] Once the plaintiff has made out a *prima facie* case in the founding affidavit[3], the onus shifts to the defendant to satisfy the court that he has a *bona fide* defence which is good in law and which is supported by facts that, if proved at trial, would constitute a complete defence.

[11] The defence must be disclosed "fully" and with "sufficient particularity" so that the court can assess whether it is a sham or raises a triable issue[4].

[3] Which the Applicant has done by annexing the agreement, confirming the default, the cancellation, and the outstanding balance on the ledger;

[4] Rule 32(3)(b); **Maharaj** *supra* at 426C-E;

[12] Where the defendant's version is so sketchy, improbable, or contradicted by the documentary record that it cannot be believed, summary judgment must be granted.

CONDONATION FOR THE LATE FILING OF THE OPPOSING AFFIDAVIT

[13] The opposing affidavit was filed some five court days late (the last permissible date being 31 January 2025). The explanation proffered is that the Respondent's attorney was engaged in a trial and experienced difficulty in contacting him. While the explanation is not particularly compelling, and falls short of the "good cause" normally required, the court has decided, in the interests of finality and to deal with the matter on the merits, to condone the late filing.

[14] This does not, however, detract from the requirement that the defence raised must still meet the **Maharaj** threshold.

THE DEFENCES RAISED

[15] The Respondent raises two main points. First, a general denial of NCA compliance (sections 129 and 130) and second, and centrally, a point *in limine* based on an alleged verbal "compromise" or variation agreement concluded on 14 June 2024 with the Applicant's legal representative.

[16] The NCA defence can be disposed of briefly. The Applicant's founding affidavit, deposed to by Leoni du Plessis, Supervisor: Asset and Loss Recovery, confirms compliance with the pre-litigation notice requirements of the NCA.

[17] The Respondent's bare denial, unsupported by any facts showing non-receipt or non-compliance, is insufficient to raise a triable issue.

THE ALLEGED VERBAL COMPROMISE AGREEMENT OF 14 JUNE 2024

[18] The Respondent alleges that on 14 June 2024 he concluded a verbal agreement with the Applicant's legal representative in terms of which he would continue to make monthly payments of R12,794.06 into the account, and that such payments would settle the arrears.

[19] He attaches a written version of the agreement marked "V1" which, he says, the Applicant drafted but which contained additional clauses never discussed or agreed to. Because of those clauses the document was never signed by the Applicant.

[20] He nevertheless contends that the verbal agreement remains binding, that the Applicant has never approached the court to cancel the verbal agreement, that he has continued to make the agreed payments, and that the arrears have now been settled. He annexes proof of various payments (annexures "V2(a) to (t)") totalling approximately R141 150.00.

[21] This defence fails on multiple levels and does not meet the **Maharaj** test.

[22] First, the original instalment sale agreement contains a classic non-variation clause. Such clauses are enforceable in South African law[5]. Any variation, suspension or waiver of rights under the agreement must be in writing and signed by both parties.

[23] A purely verbal agreement concluded more than a year-and-a-half after the summons was issued, and long after the Applicant had elected to cancel the agreement, cannot override that clause in the absence of special circumstances (fraud or public policy considerations) which are neither alleged nor present.

[24] Second, even on the Respondent's own version there was no consensus. He expressly states that the written draft ("V1") contained additional terms not discussed or agreed to, and that he therefore refused to sign it.

[25] That admission is fatal to any claim of a binding compromise. A compromise (or transaction) requires a meeting of the minds on all material terms. Here the parties never reached such consensus and the core, foundational requirement for forming a valid, legally binding agreement, *consensus ad idem*, is absent on the Respondent's own version.

[26] Third, the Respondent has furnished no additional evidence that any such verbal agreement was in fact concluded and the Respondent asserts that due to him making payments of the amount into the account it constituted an acceptance by conduct.

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5 **<u>SA Sentrale Ko-op Graanmaatskappy Bpk v Shifren</u> 1964 (4) SA 760 (A); <u>Brisley v Drotsky</u> 2002 (4) SA 1 (SCA);**

[27] Even if the assertion of oral variation could be accepted[6], the Respondent on his own documents relied on did not pay a monthly amount of R12,794.06 and payment was erratic, sometimes skipped, and were made in fluctuating amounts. The Respondent's own conduct did not signify that the agreement was varied.

[28] It is therefore not possible for me to find, that even if the agreement could be varied by conduct, that the Respondent acted as if the 'compromise agreement' was a foregone conclusion when on his own version it did not make consistent payments in the amount agreed and was on his own version was in areas with the varied agreement and did not act in accordance with the 'compromise agreement'.

[29] In the absence of credible evidence the allegation remains a bare, self-serving assertion.

[30] Fourth, the payments relied upon by the Respondent do not extinguish the arrears or bring the account up to date. The Applicant's deponent, who has personal knowledge of the account records, confirms that the account remains in arrears. Post-summons payments, even if accepted, do not automatically reinstate a cancelled agreement or preclude the granting of summary judgment where the underlying breach has not been cured.

[31] Finally, the alleged compromise was concluded long after the Applicant had cancelled the agreement and issued summons. It cannot retroactively undo the cancellation or deprive the Applicant of the relief to which it is entitled under the agreement.

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6 that the agreement could be varied by mere conduct in express violation of the non-variation clause and the Respondent refusing to sign the 'comprise' agreement;

[32] In all the circumstances the defence based on the alleged verbal agreement is not bona fide. It is sketchy, contradicted by the documentary record, and does not disclose facts which, if proved at trial, would constitute a complete defence. It therefore does not pass the *Maharaj* threshold.

CONCLUSION

[33] The Applicant has made out a clear case for summary judgment. No *bona fide* defence has been raised. The application must succeed.

[34] The following order is made:

1. The cancellation of the instalment sale agreement concluded between the parties on or about 3 September 2021 is confirmed.

2. The Respondent is ordered to return the following goods to the Applicant forthwith:

    Vehicle description: 2019 BMW 320i M Sport Launch Edition A/T (G20)

    Engine number: F[...]

    Chassis number: W[...]

3. The Applicant is authorised to retain all monies already paid by the Respondent in terms of the agreement.

4. Upon return of the vehicle referred to in paragraph 2 above, the Applicant is granted leave to institute an application against the Respondent for any outstanding damages, in compliance with section 127 of the National Credit Act 34 of 2005.

5. The rate and date of interest on the damages, if any, referred to in paragraph 4 to be determined by the Court determining outstanding damages.

6. The Respondent is ordered to pay the costs of the application (including the costs of the action) on an attorney and client scale, scale B.

JANSE VAN RENSBURG AJ

JUDGE OF THE HIGH COURT

PRETORIA

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