THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 6702/2023

In the matter between:

FIRSTRAND AUTO RECEIVABLES (RF) LIMITED Applicant/ Plaintiff

And

MR KENNETH LANGEVELDT Respondent/Defendant

Coram: YAKE AJ

Argument: 15 April 2026

Delivered: Electronically on 18 May 2026

Summary: Summary Judgment – Rule 32 of the Uniform Rules – defendant failed to disclose a *bona fide* defence which raises triable issue – summary judgment granted - defendant's special pleas and counterclaim are dismissed.

JUDGMENT

YAKE AJ

Introduction

[1] This is an application for summary judgment. For convenience, I shall refer to the applicant and respondent as the plaintiff and defendant, respectively. The plaintiff seeks an order for cancellation of an instalment sale agreement ('the agreement') and the delivery of a 2012 Volkswagen Polo 1.6 Comfortline 5DR ('the motor vehicle').

[2] The matter arises from a written instalment sale agreement concluded between WesBank and the defendant. In terms of the agreement, the defendant undertook to make monthly payments towards the purchase price of the motor vehicle. The plaintiff contends that the defendant failed to comply with the terms of the agreement, in particular by defaulting on the payment obligations. At the time of launching this application, the defendant is said to be in arrears in the sum of R96 129.71. The instalment agreement has since expired through effluxion of time on 25 January 2022.

[3] It is further contended that, notwithstanding the expiry of the agreement, the defendant has remained in possession of the vehicle and has failed to make payment towards the outstanding arrears. In the result, the plaintiff asserts that it is entitled to cancel the agreement and reclaim possession of the vehicle.

[4] The defendant opposes the application, raising various defences which, it is argued, demonstrate the existence of bona fide defence that ought to be ventilated at trial.

Background

[5] It is common cause that the plaintiff instituted action against the defendant pursuant to the agreement concluded between WesBank and the defendant on 14 January 2017. The agreement was for the purchase of a 2012 Volkswagen Polo 1.6 Comfortline 5DR motor vehicle.

[6] The material terms of the instalment sale agreement, as pleaded in the particulars of claim, are the following:

a) WesBank sold the 2012 Volkswagen Polo 1.6 Comfortline 5DR motor vehicle to the defendant for a total purchase price of R198 235.20.

b) The purchase price was payable by way of sixty monthly instalments of R3 303.92 commencing on 25 February 2017 with the last instalment due on 25 January 2022.

c) Ownership of the vehicle would remain vested in WesBank until the full amount owed under the agreement has been settled.

[7] On 25 November 2020, WesBank ceded all of its rights, title and interest in and to the agreement and motor vehicle to the plaintiff. The plaintiff avers that in July 2020, the defendant fell into arrears with his instalments in terms of the agreement and remained in arrears ever since. The last payment received was on 25 June 2020 in the sum of R3 637.82. The plaintiff further contends that on 25 January 2022, the agreement expired through effluxion of time, with the result that the current outstanding balance due is R96 129.71.

[8] On 24 July 2020, the defendant informed WesBank that his employment contract had been terminated and that he was unable to pay the monthly

instalments due to being unemployed. The defendant further informed WesBank that he has disputed the termination of his employment contract, as a result there was a pending matter between the defendant and his erstwhile employer in the Labour Court under case number C617/2020.

[9] While the matter was pending at the Labour Court, the defendant lodged a claim against his Hollard Insurance Policy ("Hollard"). Hollard advised him to wait for the outcome of the Labour Court proceedings. Hollard further informed him that, should he be reinstated, the policy would not pay out. Conversely, in the event that the Labour Court did not reinstate him, the policy would cover instalments for a period of three months after the termination of his employment.

[10] Aggrieved by Hollard's decision, the defendant referred the dispute to the Ombudsman for Long Term Insurance ("the Insurance Ombudsman"). The Insurance Ombudsman, however, resolved to pend its file until the Labour Court proceedings had been finalised. The rationale provided was that the defendant's claim with Hollard would fall away in the event of his reinstatement by the Labour Court.

[11] Notwithstanding, WesBank attempted to enter into suitable payment arrangements with the defendant. The defendant, however, was not prepared to conclude any such arrangement and refused to voluntarily surrender the motor vehicle to WesBank and /or the plaintiff. Instead, he referred the matter to the Ombudsman for Banking Services ("the Banking Ombudsman"). On 1 September 2022, the Banking Ombudsman found no maladministration on the part of the bank. It ruled that the fact that the defendant had lodged disputes with his previous employer and with Hollard, did not suspend his obligation under the agreement. The defendant remained liable to pay the agreed instalments on the account.

[12] As a result of the defendant's breach, the plaintiff issued a notice in terms of section 129 read with section 130 of the National Credit Act 34 of 2005 ('*the* NCA') on 18 October 2022. The notice informed the defendant of his default and afforded him an opportunity to remedy it, failing which the plaintiff would cancel the agreement and claim return of the motor vehicle. Notwithstanding the default notice, the defendant failed to remedy the breach. The plaintiff accordingly issued summons, which was served personally on the defendant on 25 April 2023.

[13] Pursuant to service of summons, the defendant filed a notice of intention to defend, after which he was served with a notice of bar. Pursuant to the notice of bar, the defendant delivered his plea and counterclaim. In his plea, he admits the conclusion of the instalment agreement and being indebted to WesBank but pleads that he bears no knowledge of the cession agreement from WesBank to the plaintiff. In paragraph 9 and 10 of his plea, the defendant raised the following various defences by way of special plea:

(a) Reckless lending practice and non-performance of the credit insurance of the plaintiff to the National Credit Regulator for adjudication;

(b) The plaintiff was directed by the national Credit Regulator to hold over legal action pending finalisation of the dispute;

(c) The plaintiff is guilty of substantive and procedural non-compliance;

(d) The defendant declared marriage on 2 February 1991;

(e) The spouse of the defendant was declared medically unfit to work;

(f) The spouse of the defendant received a disability grant at the time of the application for the loan;

(g) The defendant's spouse did not consent to the agreement;

(h) The credit agreement was signed without mandatory consultation and sufficient credit cover on the credit agreement and without intermediary;

(i) The customer protection plan and instalment cover concluded after the agreement, affected by Hollard and without intermediary;

(j) WesBank received a commission for the Hollard policy;

(k) The defendant was not permanently employed at the time of the application for the loan;

(l) Policy covers for three months, and only permanent employees was not disclosed; and

(m) The plaintiff failed to disclose, and the defendant failed to appreciate the financial risk.

[14] The defendant further raised the defence of non-joinder, contending that the plaintiff ought to have joined WesBank, Hollard and his wife, as they all have substantial and vested interests in the proceedings.

[15] In his counterclaim, the defendant avers that the approval of the loan was reckless. He contends that the plaintiff was aware that he was employed on a five-year contract, whereas the repayment period under the agreement extended to ten

years. The defendant argues that this disparity meant that the repayment period exceeded the duration of his employment contract, thereby rendering the credit agreement advanced reckless in terms of the NCA. The defendant further seeks to rely on section 86(7)(c)(ii) of the NCA, indicating his intention to apply for debt review. In addition, the defendant avers that the plaintiff failed to comply with the provisions of section 129 of the NCA, which requires proper notice prior to enforcement of proceedings.

[16] The defendant further pleads that, as a 59-year-old at the time of the conclusion of the agreement, his prospect of securing alternative employment after the expiry of the five-years contract would be drastically diminished, given he was close to the retirement age. On this basis, the defendant seeks an order that the plaintiff's claim be dismissed, that the credit agreement be declared reckless and set aside, and that the plaintiff be instructed to cancel the loan agreement. In the alternative, the defendant seeks that the agreement be suspended in terms of the relevant provisions of the NCA.

[17] On 6 October 2026, the defendant filed a further supplementary affidavit in opposition to the application, coupled with a counterclaim. In this affidavit, he reiterated the defences previously raised in his plea and counterclaim. In addition, the defendant introduced a further special plea of *res judicata* and *lis pendens*. He contends that there are ongoing proceedings involving the same parties, the same subject matter, and the same cause of action, which have been extant since February 2021 before the Insurance Ombudsman and the National Credit Regulator. The defendant maintains that the continuation of proceedings before this court would result in a duplication of the dispute and, accordingly, should not be entertained. He further claimed damages in the amount of R2 million, alleging that by bringing the matter to court, the plaintiff has harassed him and caused him hardship, prejudice, inconvenience and family distress.

The summary judgment application

[18] The procedural history of this matter is protracted and marked by repeated postponements. It is safe to note that at the time the defendant's plea and counterclaim were filed, the defendant was legally represented by Ezechiel Beddy &Associates Attorneys Inc. Upon receipt of the defendant's plea and counterclaim, the plaintiff launched this summary judgment application dated 1 August 2023, supported by an affidavit in compliance with Uniform rule 32(2)(a) and (b). In the application, the plaintiff seeks confirmation of cancellation of the agreement, delivery of the 2012 Volkswagen Polo 1.6 Comfortline 5DR with engine number [C…..] and chassis number [A…], and costs. The supporting affidavit of Ms. Aphiwe Mayola filed on record comprehensively addressed each of the defences raised in the plea and contended that none of them disclose a triable issue. The matter was set down for 3 October 2023.

[19] Prior to hearing the matter, the defendant filed a notice of intention to oppose the application for summary judgment on 21 August 2023, but no opposing affidavit was filed at that stage. On 3 October 2023, the matter was postponed by agreement to 31 October 2023. On that date, the matter was further postponed to the semi-urgent roll of 17 April 2024. Subsequent thereto, the defendants' attorneys of record Ezechiel Beddy & Associates, filed a notice of withdrawal. The defendant thereafter filed his opposing affidavit. The matter was set down on 13 February 2025 but was adjourned to 12 August 2025 to enable the parties to file heads of arguments. On 6 October 2025, the defendant filed a further opposing affidavit and on 14 October 2025, new attorneys, Raubenheimers Incorporated, came on record. On 18 November 2025, Raubenheimers Inc. withdrew as attorneys of record, leaving the defendant to represent himself. On 4 December 2025, the defendant filed a supplementary affidavit. The matter was subjected to further postponements and was ultimately heard on 15 April 2026.

Issues for determination

[20] Against this backdrop, the central issue for determination before this Court is whether the defences advanced by the defendant are bona fide and disclose any triable issue which is sufficient to resist summary judgment or whether the plaintiff is entitled to the relief sought.

Relevant Legal principles

[21] Uniform rule 32 ('rule 32') governs applications for summary judgment. The relevant provisions of the amended rule 32, which set out the procedural requirements to be followed for such applications, are rule 32(1)-(4), which provides as follows:

> '1) The plaintiff may, *after the defendant has delivered a plea*, apply to court for summary judgment on each of such claims in the summons as is only-
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> (a) on a liquid document;
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> (b) for a liquidated amount in money;
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> (c) for delivery of specified movable property; or
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> (d) for ejectment;
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> together with any claim for interest and costs.
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> (2)(a) Within 15 days after the date of delivery of the plea, the plaintiff shall deliver a notice of application for summary judgment, together with an affidavit made by the plaintiff or by any other person who can swear positively to the facts.
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> (b) The plaintiff shall, in the affidavit referred to in subrule (2)(a) *verify the cause of action and the amount, if any, claimed, and identify any point of law relied upon and the facts upon which the plaintiff's claim is based, and explain briefly why the defence as pleaded does not raise any issue for trial.*
>
> (c) …
>
> (3) The defendant may— (a) give security to the plaintiff to the satisfaction of the court for any judgment including costs which may be given; or (b) satisfy the court by affidavit (which shall be delivered five days before the day on which the application is to be heard), or with the leave of the court by oral evidence of such defendant or of any

other person who can swear positively to the fact that *the defendant has a bona fide defence to the action; such affidavit or evidence shall disclose fully the nature and grounds of the defence and the material facts relied upon therefor.*

(4) *No evidence may be adduced by the plaintiff otherwise than by the affidavit referred to in subrule (2), nor may either party cross-examine any person who gives evidence orally or on affidavit: Provided that the court may put to any person who gives oral evidence such questions as it considers may elucidate the matter.*' (My emphasis and further sections omitted.)

[22] In terms of rule 32(3)(b), the defendant may, amongst others, "satisfy the court by affidavit... that the defendant has a bona fide defence to the action and such affidavit shall disclose fully the nature and grounds of the defence and the material facts relied upon therefor." The court must consider whether the opposing affidavit complies with the provisions of rule 32(3)(b) and, in this regard, whether it accords with the defendant's plea. In other words, whether the defendant has, with reference to its plea, disclosed a *bona fide* defence to the action.

[23] In *Tumileng Trading CC v National Security and Fire (Pty) Ltd*[1] Binns-Ward J explained the position regarding the content of the opposing affidavit (both prior to the recent amendments to rule 32 and subsequent thereto) as follows:

"...rule 32(3)(b) which provides for what is required in a defendant's opposing affidavit, remains as it was before, save that the affidavit must now be delivered at least five days before the hearing of the application, instead of by noon on the day but one before the hearing, as had previously been the case. As has always been the position, the opposing affidavit must '*disclose fully the nature and grounds of the defence and the material facts relied upon therefor*'. The purpose of the opposing affidavit also remains, as historically the case, to demonstrate that the defendant '*has a bona fide defence to the action*'. There is thus no substantive change in the nature of the 'burden', if that is what it is, placed on a defendant in terms of the

[1] 2020 (6) SA 624 (WCC)

procedure. *However, the broader form of supporting affidavit that is contemplated in terms of the amended rule 32(2)(b) will in some cases require more of a defendant in respect of the content of its opposing affidavit than was the case in the pre-amendment regime, for the defendant will be expected to engage with the plaintiff's averments concerning the pleaded defence.*

In par 48 of the judgment, the court went on to caution as follows:

"To borrow from Navsa JA's characterisation of the defendant's position in *Joob Joob Investments*, 'such defences as were proffered [were] cast in the most dubious terms'. *The most probable inference in the circumstances is that no particularity has been furnished because the defences and supposed counterclaim are not genuinely advanced. This is especially so because the defendant not only failed, quite dismally, to satisfy the requirements of rule 32(3)(b), it also failed to respond to the challenge to it in the plaintiff's supporting affidavit to back up its bald plea with substantiating particularity. If a defendant fails to put up the facts that it obviously should have been able to do were it advancing a genuine defence, it cannot complain if the court is left in a position in which it is unable to find a reasonable basis to doubt that it does not have a bona fide defence.* There is, moreover, nothing in the papers to justify the court exercising its overriding discretion in favour of the defendant. (My emphasis added)

[24] It is well established that the granting or refusal of summary judgment falls within the court's discretion. In exercising this discretion, the court must ensure that the procedure is not used to deprive a defendant of the opportunity to defend the action where he has a genuine defence. This principle was reaffirmed in *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture*[2] where the Supreme Court of Appeal emphasised that summary judgment should not be used to bar the defendant from presenting a *bona fide* defence. It stated:

'So too in South Africa, the summary judgment procedure was not intended to 'shut (a defendant) out from defending', unless it was very clear indeed that he had no case in the action. It was intended to prevent sham defenses from defeating the rights of parties by delay, and at the same time causing great loss to plaintiffs who were endeavoring to enforce their rights.'

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[2] [2009] ZASCA 23; 2009 (5) SA 1 (SCA) para 31

[25] The defendant may, however, resist summary judgment by filing an affidavit that discloses a *bona fide* defence capable of satisfying the court. Such defence must be set out with sufficient particularity to demonstrate substance; a mere or bald denial is inadequate. In terms of rule 32(3), a defendant must fully disclose the nature and grounds of the defence as well as the material facts relied upon. To successfully oppose summary judgment, he must show that a *bona fide* defense exists which raises a triable issue and not merely allege such in his affidavit. As it was held in *Breitenbach v Fiat SA (Edms) Bpk,*[3] that the court must be satisfied that there is a *bona fide* defence; bald, vague and sketchy defenses should not be tolerated. Similarly, in *Maharaj v Barclays National Bank Ltd,*[4] the court emphasised that a defendant must provide a clear and complete disclosure of the defence and the material facts supporting it. The court went further to state that:

'[O]ne of the ways in which a defendant may successfully oppose a claim for summary judgement is by satisfying the court that he has a bona fide defence to the claim. Where the defence is based upon facts, in the sense that material facts alleged by the plaintiff in his summons, or combined summons, are disputed or new facts are alleged constituting a defence, the Court does not attempt to decide these issues or to determine whether there is a balance of probabilities in favour of the one party or the other. All that the court enquires into is:

(a) whether the defendant has 'fully' disclosed the nature and grounds of his defence and the material facts upon which it is founded,

(b) whether on the facts so disclosed the defendant appears to have, as to either the whole or part of the claim, and

(c) a defence which is bona fide and good in law. If satisfied on these matters the Court must refuse summary judgement, either wholly or in part, as the case may be.'

[3] 1976 (2) SA 226 (T) at 229F-H.
[4] 1976 (1) SA 418 (A) at 426.

Discussion of defences

[26] It is common cause that the parties concluded an instalment agreement in terms of which the defendant was required to make payments upon delivery of the vehicle. From the outset, the defendant does not dispute his failure to make payments or that he is in arrears. Upon careful consideration of the papers filed and oral submissions, it is evident that the defendant is in breach of the agreement. This position is supported by the statement of account marked H in the bundle.[5]

[27] With that being said, it is now necessary to consider the defences raised by the defendant. Upon careful scrutiny, it becomes apparent that several of these purported defences are, in truth, not defences at all. Nevertheless, it is prudent to commence with the preliminary issues, namely non-joinder of necessary parties, *lis pendens*, and *res judicata*, for the reason that, a finding in favour of the defendant on any of these points would have the effect of disposing of the matter in limine.

Non-joinder

[28] The defendant contends WesBank, Hollard, and his wife ought to have been joined as parties in these proceedings, as they all have substantial and vested interests in the matter. However, the defendant failed to demonstrate, with any degree of specificity, the nature of such interest or how he would be prejudiced by their non joinder. Mere assertions, without substantiation, cannot suffice to establish the necessity of joinder.

[29] The plaintiff on the other hand has disputed this contention and submitted that none of the parties hold a direct and substantial interest in the relief sought. He asserts that the relief claimed is confined to the return of the motor vehicle,

[5] Page 54 to 61 of the bundle

and it is evident that the determination of this issue does not require the presence of WesBank, Hollard Insurance, or the defendant's wife. Accordingly, the defence based on non-joinder is without merit and should be dismissed.

[30] It is trite that the principle of non-joinder requires that a party be joined only if he has a direct and substantial interest in the relief sought. In the present matter, WesBank ceded all its rights and interests to the plaintiff, thereby divesting itself of any further interest in the matter. Similarly, Hollard's involvement is limited to providing policy cover in the event of non-payment of the instalments by the defendant and does not extend to ownership or contractual interest in respect of the motor vehicle itself. It is my view that WesBank and Hollard have no direct and substantial interest, as such have no standing in these proceedings.

[31] As for the defendant's wife, no evidence has bėen presented to demonstrate that she has a direct and substantial interest in the instalment agreement or the relief sought. On the facts before me, none of the parties identified by the defendant meet this threshold. Accordingly, the defence of non-joinder cannot succeed. It does not disclose a triable issue and is incapable of resisting summary judgment.

Lis pendens and res judicata

[32] The defendant contends that there are ongoing proceedings involving the same parties, the same subject matter, and the same cause of action, which have been extant since February 2021 before the Insurance Ombudsman and the National Credit Regulator. On this basis, he submits that this raises a defence of *lis pendens* and *res judicata*. The requirements for *lis pendens* to succeed are:

(i) The litigation is between the same parties;

(ii) based on the same cause of action; and

(iii) with respect to the same subject matter on both proceedings.

[33] Wallis JA in *Caesarstone Sdot-Yam Ltd v The World of Marble and Granite 2000 CC and Others*[6] explained the doctrine of *lis pendens* as follows:

'As its name indicates, a plea of *lis alibi pendens* is based on the proposition that the dispute (lis) between the parties is being litigated elsewhere and therefore it is inappropriate for it to be litigated in the court in which the plea is raised. The policy underpinning it is that there should be a limit to the extent to which the same issue is litigated between the same parties and that it is desirable that there be finality in litigation. The courts are also concerned to avoid a situation where different courts pronounce on the same issue with the risk that they may reach differing conclusions. It is a plea that has been recognised by our courts for over 100 years.'

[34] On the other hand, the requirements of *res judicata* are:

(i) there must be a previous judgment by a competent court;

(ii) between the same parties;

(iii) based on the same cause of action, and

(iv) with respect to the same subject-matter or thing.

[35] It is trite that for the defence of *lis pendens* to succeed, the defendant must demonstrate that there is another action pending between the same parties, based on the same cause of action, and in respect of the same subject matter. Similarly, the plea of *res judicata* requires proof that the matter has already been finally adjudicated upon by a competent court. In the present matter, the defendant relies on proceedings before the Insurance Ombudsman and the National Credit Regulator. He however failed to demonstrate that the proceedings before the Insurance Ombudsman or the National Credit Regulator constitute litigation between the same parties, nor that they involve the same relief sought herein,

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[6] Caesarstone Sdot-Yam Ltd v World of Marble and Granite 2000 CC and Others [2013] ZASCA 129; 2013 (6) SA 499 (SCA) para 2.

namely the return of the motor vehicle. Neither did he demonstrate that the matter had already been finally adjudicated.

[36] Moreover, these are not judicial proceedings before a competent court, nor do they involve adjudication of the plaintiff's claim for repossession of the motor vehicle. In any event, neither forum is vested with judicial authority to render a final judgment binding upon this court. I find that the requirements for *lis pendens* and *res judicata* have not been satisfied. The defences are in my view misconceived and incapable of resisting summary judgment. Accordingly, the defences of *lis pendens* and *res judicata* must be rejected. I now turn to the defences raised in his plea, counterclaim and supplementary affidavits.

Referral of reckless lending / non-performance of the credit insurance to the National Credit Regulator for adjudication

[37] The defendant avers that he has referred the agreement to the National Credit Regulator on the basis of reckless lending and Hollard's alleged failure to make payments. He contends that WesBank entered into a ten-year repayment contract with him notwithstanding that he was employed on a five-year contract. He further contends that at the time of entering into this contract, he was 59 years old and close to retirement age, while his wife was receiving a disability grant of R7000.00. He submits that, taking all the above into account, the plaintiff was reckless in granting the credit agreement.

[38] The plaintiff disputes this contention and points out that the defendant referred the matter to both the Insurance Ombudsman and Banking Ombudsman. The Insurance Ombudsman elected to pend the matter until finalisation of Labour Court proceedings, while the Banking Ombudsman found in favour of WesBank. Insofar as referral to National Credit Regulator, the plaintiff submits that although the complaint is dated 1 November 2022, the National Credit Regulator only

acknowledged it on 1 November 2023. This referral, the plaintiff submits, postdates the issuing of summons (24 April 2023), the summary judgment application (1 August 2023), and even the order granted by Dolamo J on 31 October 2023 postponing the summary judgment.

[39] The plaintiff further argues that the instalment agreement was concluded in accordance with the NCA, and that the agreement was for a period of five years not for ten years as the defendant has alleged. The plaintiff maintains that the defendant voluntarily assumed the obligations under the contract, and that the alleged disparity between the duration of his employment contract and the repayment period is unfounded and misleading.

[40] On perusing the papers before me, the court notes that the complaint initiation form to the National Credit Regulator is dated 1 November 2022 and that the acknowledgment thereof by the latter is dated 1 November 2023. Save for the complaint form dated 1 November 2022, no information has been placed before court as to when this form was forwarded to the National Credit Regulator, nor has any explanation been given for the delay in their reply. Regrettably, this referral appears to be the last-minute attempt, made after issuance of summons and lodging of this application. As such, the referrals cannot stand as a valid defence in these proceedings.

[41] Moreover, in order for the defendant to be successful in his defence of reckless lending as envisaged in section 80 of the NCA, he must demonstrate that the plaintiff failed to conduct a proper affordability assessment of his financial means or that the credit agreement was granted despite his inability to repay. None of these factors has been alleged by the defendant. On the contrary, the papers reflect that at the time of the agreement, the plaintiff did conduct a credit

assessment.[7] The defendant was gainfully employed and had financial means to meet his obligation.[8] His reliance on the period of ten years repayment period is clearly misleading as the agreement marked "C" shows that the repayment commencement date is 13 January 2017 and expiry date is 25 January 2020; a period of five years. On the facts before me, the defendant has not provided sufficient evidence to establish that the statutory requirements for reckless lending under the NCA have been met. This defence is therefore without merit and stands to be missed.

Section 87 (7)(c)(ii) notice – debt review

[42] The defendant seeks the indulgence of this Court to refer the matter for debt review so that he may make rearrangements. It is noteworthy that the defendant does not allege that he has applied for debt review, nor that any debt review process is presently under way. His request is therefore premised solely on an intention to initiate such proceedings at some future stage. Halting these proceedings on the basis of a mere stated intent would not be in the interests of justice and would undermine the very purpose for which Rule 32 was designed. As correctly submitted by the plaintiff, this belated intention to be placed under debt review would not avail the defendant in these proceedings, since the plaintiff would in any event be excluded from such process. Summons were issued on 25 April 2023, almost three years prior, and any debt review process commenced at this late stage would have no bearing upon the present claim before this Court. Accordingly, the defence premised on debt review is without merit and incapable of resisting summary judgment.

Section 129 notice

[7] Plaintiff's plea to defendant counterclaim, page 101 annexure A.

[8] Plaintiff's plea to defendant counterclaim, page 117 annexure C.

[43] The defendant denies receipt of the section 129 notice and prays that the matter be dismissed for non-compliance with the NCA. Strikingly, in his plea,[9] he admitted receipt of the notice. Importantly, the section 129 notice was dispatched to his chosen *domicilium* by registered post and was also emailed to him as far back as 19 October 2022.[10] The defendant cannot, at this late stage, alter his position and dispute receipt thereof. It appears to this Court that the defendant is intent on raising any form of defence to avoid compliance with his contractual obligations. This particular defence is devoid of merit and cannot succeed.

Lack of spousal consent

[44] The defendant contends that his wife had not consented to the conclusion of the agreement. The plaintiff does not dispute this contention, save to aver that it does not constitute a defence to the claim for the return of the motor vehicle. Section 15(2)(f) of the Matrimonial Property Act 88 of 1984 ("MPA") provides "that a spouse ... *shall not, without the written consent of the other spouse, ... enter as a consumer, into a credit agreement* ...to which the NCA applies." This statutory prohibition is peremptory. An agreement concluded in contravention thereof is unlawful, void *ab initio*, and unenforceable.[11] (*My emphasis*).

[45] However, section 15(9)(a) of the MPA provides that the required consent is deemed to have been given where the other contracting party '*does not know and cannot reasonably know that the contract is being entered into contrary to these provisions.*' In such circumstances, the contract remains valid and enforceable. The onus rests on the contracting party to demonstrate that it has

[9] Defendant's plea page 83 para 9.1
[10] Page 62 and 64 of bundle

[11] *Marais and Another NNO v Maposa and Others* [2020] ZASCA 23; 2020 (5) SA 111 (SCA) para 26.

made the enquiries a reasonable person would make as to whether the other party is married, and if so, under which matrimonial regime. (*My emphasis*).

[46] In completing his personal details, the defendant indicated that he was married in community of property. The plaintiff correctly submits that the defendant's wife was aware of the conclusion of the agreement, as evidence by the defendant's returning home with a new motor vehicle. However, such knowledge does not absolve the plaintiff of its statutory obligation to obtain the written consent of the defendant's wife prior to concluding the agreement. This failure to comply with section 15(2)(f) of the MPA renders that agreement unlawful, void, and unenforceable. The protection under section 15(9)(a) of the MPA cannot be extended to the plaintiff, as the plaintiff was fully aware that the defendant is married but failed to get the consent of his wife. Prima facie one may argue that this is a defence which is capable of resisting summary judgment. However, what the court must determine is whether such failure to comply with section 15 (2) (f) rendered the plaintiff's claim invalid.

[47] It follows that while the absence of spousal consent renders the underlying credit agreement invalid, but it does not extinguish the plaintiff's rights in respect of the motor vehicle and as such does not translate to a defence against repossession. The plaintiff's claim is not premised on enforcement of the credit agreement but rather return of motor vehicle. Ownership of the motor vehicle should therefore revert to its original owner, and the relief sought by the plaintiff, namely, repossession of the motor vehicle, is therefore consistent with the legal consequences of the agreement's invalidity. Accordingly, the defence premised on lack of spousal consent cannot succeed. It does not disclose a triable issue and is incapable of resisting summary judgment.

Credit agreement signed without credit cover and intermediary / WesBank received a commission for the Hollard policy / Policy cover for three months, and only permanent employees was not disclosed;

[48] There appears to be a misconception on the part of the defendant regarding the policy cover he was required to take. Clause 5.1 of the credit agreement deals expressly with the insurance cover. The record reflects that the defendant did take out insurance policy with Hollard. The terms of that policy are a matter between the defendant and Hollard not with plaintiff. Indeed, the defendant has already referred that dispute to the Insurance Ombudsman. However, the existence of such a dispute does not absolve him from his contractual obligation under the agreement. In my view the defendant cannot escape liability merely because of dissatisfaction with the insurance policy or the commission received by WesBank in respect of the Hollard policy. I am satisfied this does not constitute a defence to the plaintiff's claim.

Defendant not permanently employed at the time of agreement

[49] It seems to me that the defendant's submissions regarding his employment status at the time of concluding the agreement amount to little more than grasping at straws. It is common cause that the defendant was employed at the time of entering into the agreement. An affordability assessment was duly conducted, and although his employment was not permanent, the assessment revealed that he was capable of meeting his contractual obligations.

[50] It is indeed unfortunate that the defendant's employment contract was abruptly terminated. Although this Court empathises with his circumstances, however, it would be wrong in law, and set a dangerous precedent, if a party were to be absolved from contractual obligations merely by virtue of losing

employment. Contracts are binding, and the risk of unforeseen changes in personal circumstances cannot be shifted onto the other contracting party.

[51] The record reflects that the last payment made by the defendant in respect of the agreement was in June 2020. A period of five years has since elapsed without any contribution from him. The Court takes judicial notice that a motor vehicle is a depreciating asset. There can be no doubt that the motor vehicle has significantly depreciated in value during this extended period of non-payment. Accordingly, the defendant's reliance on his changed employment circumstances cannot assist him. His failure to meet his obligations over such a prolonged period is not a defence but reinforces the plaintiff's entitlement to repossession of the motor vehicle.

Non discloser of cession

[52] The defendant seeks to rely on the fact that WesBank did not inform him of the cession of the agreement prior to effecting same. The plaintiff does not dispute this factual assertion but correctly points out that the defendant failed to raise this issue in his plea. Under the amended rule 32 (2) (a), the plaintiff may apply for summary judgment only after the defendant has delivered a plea. This amendment promotes procedural fairness by enabling the plaintiff to assess the defence before deciding whether to proceed with summary judgment or not. However, rule 32 (4) confines the plaintiff to the affidavit filed in terms of subrule (2); no replying affidavit or further evidence is to be adduced, nor is cross-examination permitted.

[53] Sadly, in the present matter, the defendant was permitted to file various supplementary affidavits long after the summary judgment application had been lodged. This created a situation in which the plaintiff was unable to reply to the allegations contained in those supplementary affidavits. This is precisely the

lacuna highlighted by Henny J in *Belrex 95 CC v Barday*[12], where he observed that "this is a lacuna, which can be used as a stratagem by a defendant wishing to frustrate a plaintiff from proceeding with summary judgment." Henny J further suggested that this was an aspect which the task team of the Rules Board may not have considered. Regrettably, it appears that the position remains unchanged. The present matter illustrates the very abuse envisaged: the defendant filed one supplementary affidavit after another, without the plaintiff having any opportunity to reply. This conduct amounts to a clear abuse of the rules, enabling the defendant to employ late amendments of his plea as a tactic to frustrate or delay summary judgment proceedings. Such stratagems cannot be countenanced by this court.

[54] In any event, the plaintiff relies on clause 16.2 of the instalment agreement, which expressly provides: *'we may, without notice to you, transfer any of our rights and/or obligations, and you agree that you will recognise the transferee's rights.'"*[13] Accordingly, the defendant's reliance on the absence of notice of cession cannot stand as a defence. The contractual terms are clear and binding, and the defendant's argument in this regard is without merit.

Claim for damages - R2 million

[55] The defendant has prayed for damages in the amount of two million, alleging harassment, hardship, prejudice, inconvenience and family distress. In order to obtain such relief, the defendant was required to properly advance a counterclaim setting out the basis upon which such damages are sought. Nowhere in his counterclaim is such relief prayed for. In fact, the reasons relied upon in support of the damages claim were not included in the counterclaim and cannot

[12] 2021 (3) SA 178 WCC

[13] Clause 16.2 of Terms and conditions of instalment agreement, page 19 of bundle.

be introduced for the first time in an opposing affidavit. It follows that the defendant's claim for damages is not proper before the court and must fail.

Conclusion

[56] As intimated above, this matter has a prolonged litigation history which commenced in 2023. The application for summary judgment was initiated on 1 August 2023, and to date, has not been finalized. This prolonged litigation history underscores the very delays that rule 32 is designed to prevent and highlights the abuse of court process that the rule seeks to curtail. The defendant's conduct demonstrates a consistent pattern of raising multiple defences and filing successive affidavits, none of which disclose triable issues. The plaintiff is undoubtedly frustrated and has been prejudiced by the delay in finalising the matter. Rule 32 exists to enable a plaintiff, who has established a clear case, to obtain judgment swiftly and thereby avoid the unnecessary costs and time associated with a trial.

[57] It is clear from the papers before me that there is no genuine dispute in respect of the defendant's indebtedness to the plaintiff. All defences raised by the defendant in his plea, counterclaim, and various supporting affidavits demonstrate an absence of *bona fides* and disclose no triable issues. They all fall short of meeting the requirements of rule 32 (3). The Court is therefore satisfied that the plaintiff has accordingly made a proper case and that summary judgment is the appropriate remedy.

[58] The remaining issue is the consideration of costs. The general rule is that costs follow the result. I see no reason to depart therefrom.

Order

[59] In the result I make the following order:

a) Summary judgment is hereby granted.

b) The instalment sale agreement concluded between the parties is hereby cancelled.

c) The defendant is directed to return forthwith to the plaintiff the motor vehicle, being a 2012 Volkswagen Polo 1.6 Comfortline 5DR, with engine number C [.....] and chassis number A [....].

d) The defendant's special pleas are dismissed.

e) The defendant's counterclaim is dismissed.

f) The defendant is ordered to pay the costs of the application.

[redacted]

YAKE S.
ACTING JUDGE OF THE HIGH COURT

APPEARANCES

For the Plaintiff: Adv E. Nel

Instructed by: Schneider Gallon Reef & Co.

For the Defendant: Mr K. Langeveldt